United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL

76-7528

B

P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES STEEL AND CARNEGIE PENSION FUND, INC., CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, and THE NATIONAL BANK OF COMMERCE OF DALLAS (AS TRUSTEE OF THE OMEGA-ALPHA, INC. POOL TRUST),

Plaintiffs-Appellants,

—against—

HENRY ORENSTEIN, FIRST NATIONAL CITY BANK, HAYDEN STONE INC., BERNSTEIN-MACAULAY, INC., ROGER S. BERLIND, and SANFORD I. WEILL,

Defendants,

—and—

FIRST NATIONAL CITY BANK,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
JAN 31 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume III

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Citibank's First Set of Admissions, 4-2-75

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

UNITED STATES STEEL AND CARNEGIE PENSION FUND, INC., et al.,

Plaintiffs,

74 Civ. 391 (WK)

-against-

HENRY ORENSTEIN, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - -x

RESPONSE TO FIRST SET OF PLAINTIFFS' REQUESTS FOR ADMISSIONS

Defendant First National City Bank makes the following statement in response to the Request for Admissions -- First Set served upon Citibank by plaintiffs United States Steel and Carnegie Pension Fund, Inc., Connecticut Mutual Life Insurance Company and National Bank of Commerce of Dallas on or about January 17, 1975.

DEFINITIONS

(a) "Citibank" means defendant First National City Bank, its subsidiaries, divisions, affiliates, directors, officers, employees and agents;

(b) The "Pension Fund" means plaintiff United States Steel and Carnegie Pension Fund, Inc.

RESPONSES TO REQUESTS FOR ADMISSIONS

1. (a) Admits the genuineness of the Agreement, bearing the date November 30, 1950, between Citibank and the Pension Fund ("the Agreement"), a copy of

which is attached to the request to admit as Exhibit A.

1. (b) Admits the genuineness of the modification of the Agreement agreed to by Citibank and the Pension Fund on or about September 22, 1954, retroactive to January 1, 1954, a copy of which is attached to the request to admit as Exhibit B.

1. (c) Admits the genuineness of a modification of the Agreement agreed to by Citibank and the Pension Fund on or about July 18, 1956, retroactive to July 1, 1956, a copy of which is attached to the request to admit as Exhibit C.

1. (d) Admits the genuineness of an amendment to the Agreement agreed to by Citibank and the Pension Fund on or about April 3, 1959, a copy of which is attached to the request to admit as Exhibit D.

1. (e) Admits the genuineness of an amendment to the Agreement agreed to by Citibank and the Pension Fund on or about April 6, 1960, retroactive to January 1, 1960, a copy of which is attached to the request to admit as Exhibit E.

2. Admits that Citibank and the Pension Fund were parties to the Agreement, as amended, at all times during the year 1971.

3. Admits that as compensation for services by Citibank under the Agreement, as amended from time to time, Citibank received from the Pension Fund the following sums during each of the following years:

1959	--	$92,014.18
1960	--	71,613.48
1961	--	74,506.58
1962	--	76,315.47
1963	--	81,683.38
1964	--	89,854.28
1965	--	94,912.15

1966 -- 90,110.00
1967 -- 72,341.50
1968 -- 77,099.04
1969 -- 86,080.99
1970 -- 87,500.00
1971 -- 96,671.00

4. Admits that for each of the years 1966 through 1971 Citibank allocated approximately 25 percent of the fees received by it from the Pension Fund under the Agreement as amended, to investment advisory services, and 75 percent to custodial services, as set forth in Request No. 4; but denies that for some time prior to 1966 Citibank had allocated 50 percent of the fees it received from the Pension Fund thereunder to investment advisory services and 50 percent of such fees to custodial services.

Dated: New York, New York
April 2, 1975

SHEARMAN & STERLING
Attorneys for First National
City Bank
53 Wall Street
New York, New York 10005

By
A Member of the Firm

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

1. On September 28, 1971, plaintiffs purchased $4,250,000 of the $5,250,000 of convertible subordinated notes (the "Notes") sold by Topper Corporation ("Topper"); the Notes were not required to be registered pursuant to the Securities Act of 1933 (the "Private Placement").

ADMITS

2. Plaintiff United States Steel and Carnegie Pension Fund, Inc. (the "Pension Fund") is a Pennsylvania corporation with its principal office at 71 Broadway, New York, New York.

ADMITS

3. The Pension Fund purchased $3 million of the Notes in the Private Placement.

DENIES EXCEPT ADMITS THAT THE PENSION FUND WAS THE BENEFICIAL OWNER FOR WHOM WAS PURCHASED $3 MILLION OF NOTES IN THE PRIVATE PLACEMENT IN THE NAME OF "MORGAN GUARANTY TRUST COMPANY OF NEW YORK AS AGENT FOR AN INSTITUTIONAL INVESTOR, SCHMIDT & COMPANY, ACCOUNT NO. 288".

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*Citibank response appears in capital letters.

5. Plaintiff Connecticut Mutual Life Insurance Company ("Connecticut Mutual") is an insurance corporation organized and existing under the laws of the State of Connecticut, with its principal office at 140 Garden Street, Hartford, Connecticut.

ADMITS

6. Connecticut Mutual purchased $1 million of the Notes in the Private Placement.

ADMITS

7. Plaintiff National Bank of Commerce of Dallas (the "Dallas Bank") is a national banking association chartered under the laws of the United States, with its principal office at the LTV Tower, Dallas, Texas.

ADMITS

8. The Dallas Bank purchased $250,000 of the Notes in the Private Placement as trustee for the Omega-Alpha, Inc. Pool Trust.

ADMITS

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*Citibank response appears in capital letters

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

10. Defendant First National City Bank ("Citibank") is a national banking association chartered under the laws of the United States, with its principal offices at 399 Park Avenue, New York, New York.

ADMITS

11. Topper was a Delaware corporation engaged in the business of manufacturing and marketing toys for boys and girls. At the time of the Private Placement its products included the Dawn line of fashion dolls, clothing outfits and accessories; toy household appliances sold under the name Suzy Homemaker; Johnny Lightning die-cast miniature cars and racing sets; Ding-A-Ling robots; Zoomer Boomer steel trucks; and dolls, including, among others, Smartypants. "At the time of the Private Placement, Topper had entered into a royalty agreement pursuant to which it would undertake the design, development, manufacture and distribution under the 'Sesame Street' name of a line of educational playthings."

DENIES EXCEPT ADMITS THAT TOPPER WAS A DELAWARE CORPORATION ENGAGED IN THE BUSINESS OF MANUFACTURING AND MARKETING TOYS FOR BOYS AND GIRLS. AT THE TIME OF THE PRIVATE PLACEMENT ITS PRODUCTS INCLUDED THE DAWN LINE OF FASHION DOLLS, CLOTHING OUTFITS AND ACCESSORIES; TOY HOUSEHOLD APPLIANCES SOLD UNDER THE NAME SUZY HOMEMAKER; JOHNNY LIGHTNING DIE-CAST MINIATURE CARS AND

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*Citibank response appears in capital letters.

(11 cont.)

RACING SETS; DING-A-LING ROBOTS; ZOOMER BOOMER STEEL TRUCKS: DOLLS, INCLUDING, AMONG OTHERS, SMARTYPANTS; AND THE "SESAME STREET" LINE OF EDUCATIONAL PLAYTHINGS. TOPPER'S APRIL 29, 1971 PUBLIC OFFERING PROPECTUS (PART OF PX 462) STATED THAT IN MARCH, 1971 TOPPER ENTERED INTO A ROYALTY AGREEMENT WITH CHILDREN'S TELEVISION WORKSHOP PURSUANT TO WHICH IT WOULD UNDERTAKE THE DESIGN, DEVELOPMENT, MANUFACTURE AND DISTRIBUTION UNDER THE "SESAME STREET" NAME OF A LINE OF EDUCATIONAL PLAYTHINGS.

12. Topper was the successor to a business founded by Henry Orenstein ("Orenstein") and his uncle, Marrius Orenstein, which commenced the distribution of toys through supermarkets in 1953.

ADMITS

13. De Luxe Reading Corporation ("De Luxe Reading"), a wholly-owned subsidiary of Philadelphia and Reading Corporation, acquired the business from the Orensteins in 1960.

ADMITS

14. In 1964, De Luxe Reading began eliminating its supermarket business; at the same time, it began marketing its products through conventional toy outlets.

ADMITS

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*Citibank response appears in capital letters.

15. In October 1966 Orenstein, who was the President of De Luxe Reading, joined with Marrius Orenstein and a group of nine other investors to purchase the business from Philadelphia and Reading Corporation.

ADMITS

16. In connection with the purchase of Topper's business from De Luxe Reading, First National City Bank ("Citibank") and Manufacturers Hanover Trust Company ("Manufacturers Hanover") agreed to loan money to Topper pursuant to a finance agreement, as amended from time to time (the "Finance Agreement").

DENIES EXCEPT ADMITS THAT IN CONNECTION WITH THE PURCHASE OF TOPPER'S BUSINESS FROM DELUXE READING, CITIBANK AND MANUFACTURERS HANOVER TRUST COMPANY ("MANUFACTURERS HANOVER") AGREED TO LOAN MONEY TO TOPPER PURSUANT TO A FINANCE AGREEMENT.

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

17. At all times from October 4, 1966 until at least through the end of 1971, Citibank and other lenders advanced monies to Topper, and Citibank acted as agent for such other lenders, including Manufacturers Hanover.

DENIES EXCEPT ADMITS THAT AT ALL TIMES FROM OCTOBER 4, 1966 UNTIL AT LEAST THROUGH THE END OF 1971, CITIBANK, MANUFACTURERS HANOVER AND OTHERS FROM TIME TO TIME (THE "LENDING BANKS"), ADVANCED MONIES TO TOPPER, AND CITIBANK PURSUANT TO THE TERMS OF THE FINANCE AGREEMENT, AS AMENDED FROM TIME TO TIME (THE "FINANCE AGREEMENT"), ACTED AS AGENT FOR THE OTHER LENDING BANKS, INCLUDING MANUFACTURERS HANOVER.

18. Citibank and Manufacturers Hanover Trust initially advanced $20 million to Topper under the Finance Agreement.

ADMITS

19. Under the Finance Agreement Topper granted the Banks a continuing security interest in, among other things, all receivables, inventory, machinery, equipment and all sums at any time standing to the credit of Topper on the books of the Banks.

ADMITS

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*Citibank response appears in capital letters.

20. Under the Finance Agreement the Banks agreed to lend Topper at their discretion, (i) up to 80% of the face amount of receivables which they deemed "eligible" net of applicable discounts and less such reserves as they deemed proper and necessary, plus (ii) from time to time varying percentages on different sorts of inventory and other assets.

ADMITS

21. Under the Finance Agreement the finance charge of the Banks to Topper was initially set at 9.47% per annum based upon the then prevailing prime interest rate of 6% with a provision for adjusting the finance charge to the extent of any subsequent change in such rate.

ADMITS

22. Measured by the amount of the Banks' total advances, Topper was the largest account under the supervision of the Citibank Factoring and Commercial Finance Division at the time of the Private Placement.

ADMITS

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*Citibank response appears in capital letters.

23. As of September 17, 1971, the total secured loan to Topper was $20,147,404, including the Ford Motor loan of $7 million. Ford Motor's share of the total loan was 35%; Manufacturers Hanover's share was 28%; Citibank's share was 27%; and Fidelity Union Trust Company's share was 10%.

ADMITS

24. Under the Finance Agreement, the other participating banks appointed Citibank their agent to make all advances, to accept all assignments, to receive all collections, and to "manage and conduct the loan and collateral accounts" between the Banks and Topper.

ADMITS

25. Topper was authorized to deal with Citibank with "the same force and effect as if [Citibank] were the sole lender" under the Finance Agreement.

ADMITS

26. For advancing its share of the bank loan to Topper and for managing the Topper account, Citibank retained as compensation the balance of income received from Topper under the Finance Agreement which was not remitted to other participants.

ADMITS

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*Citibank response appears in capital letters.

27. In 1971 Topper paid interest at an annual rate of 9%, but Manufacturers Hanover received interest on its share of the loan at a rate of 7.18% and Fidelity Union at 6.40%.

DENIES EXCEPT ADMITS THAT AT THE TIME OF THE PRIVATE PLACEMENT TOPPER PAID INTEREST AT AN ANNUAL RATE OF 9%; MANUFACTURERS HANOVER RECEIVED INTEREST ON ITS SHARE OF THE LOAN AT A RATE OF 7.28% AND FIDELITY UNION AT 7.15%.

28. The yield to Citibank from the Topper loan may be calculated by dividing the total compensation retained by Citibank applicable to any specified period of time by the actual average outstanding principal balance of Citibank's share of the Topper loan during that same period.

ADMITS

29. The yield, so calculated, to Citibank for its investment and its services to the other lenders was in excess of the interest rate charged Topper.

ADMITS

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*Citibank response appears in capital letters.

30. The total amount of compensation received by the Banks from Topper under the Finance Agreement compared with the amount of compensation retained by Citibank for its own account was as follows:

Year	Total Compensation	Citibank Compensation	Citibank Share as Percent of Total
1969	$1,433,589	$547,666	47.8%
1970	$1,549,572	$732,703	47.3%
1971	$1,351,827*	$702,815*	50.5%*

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* Excludes compensation of $40,444 received by Citibank as "service charge" on Ford Motor Credit Corporation loan to Topper of $7 million.

DENIES EXCEPT ADMITS THAT THE TOTAL AMOUNT OF COMPENSATION RECEIVED BY THE LENDING BANKS FROM TOPPER UNDER THE FINANCE AGREEMENT COMPARED WITH THE AMOUNT OF COMPENSATION RETAINED BY CITIBANK FOR ITS OWN ACCOUNT WAS AS FOLLOWS:

Year	Total Compensation	Citibank Compensation	Citibank Share as Percent of Total
1969	$1,143,589	$547,666	47.9%
1970	$1,549,572	$732,703	47.3%
1971	$1,351,827**	$702,815**	50.5%**

** Excludes compensation of $40,444 received by Citibank as "service charge" on Ford Motor Credit Corporation loan to Topper of $7 million.

**Citibank response appears in capital letters.

31. Topper suffered a net loss of $8,621,733 for the nine month period ending October 3, 1966; a net loss of $18,714,721 for the period from October 4, 1966 to February 4, 1967; and a net loss of $833,144 for the period from February 5, 1967 to December 31, 1967.

DENIES EXCEPT ADMITS THAT TOPPER REPORTED A NET LOSS OF $8,621,733 FOR THE NINE MONTH PERIOD ENDING OCTOBER 3, 1966; A NET LOSS OF $18,714,721 FOR THE PERIOD FROM OCTOBER 4, 1966 TO FEBRUARY 4, 1967; AND A NET LOSS OF $833,144 FOR THE PERIOD FROM FEBRUARY 5, 1967 to DECEMBER 31, 1967.

32. Part of the loss suffered by Topper during the thirteen month period ended February 4, 1967 was attributable to the return of approximately $4,200,000 of toys sold to customers under "bill and hold" arrangements in 1965.

DENIES EXCEPT ADMITS THAT PART OF THE LOSS REPORTED BY TOPPER DURING THE THIRTEEN MONTH PERIOD ENDED FEBRUARY 4, 1967 WAS ATTRIBUTED TO THE RETURN OF APPROXIMATELY $4,200,000 OF TOYS SOLD TO CUSTOMERS UNDER "BILL AND HOLD" ARRANGEMENTS IN 1965.

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*Citibank response appears in capital letters.

33. On December 28, 1967, an amendment to the Finance Agreement included as a condition precedent to the Banks' financing of Topper in 1968 that Orenstein and other parties participate with the Banks in the Finance Agreement with Topper.

DENIES EXCEPT ADMITS THAT A DECEMBER 28, 1967 AMENDMENT TO THE FINANCE AGREEMENT STATED, AMONG OTHER THINGS, THAT

> "1. As conditions precedent to this agreement becoming effective the following must have been accomplished, to wit:
>
> (a) D.L.T. shall have caused Henry Orenstein and other parties satisfactory to the Banks to participate with the Banks in their financing agreement with D.L.T.
>
> Such participations shall aggregate not less than $1,560,000 and shall be junior to the interest of the Banks. Each such participant shall execute a participation agreement containing substantially the same terms and conditions as are contained in the participation agreement heretofore executed by Henry Orenstein dated February 16, 1967 except that the earnings and income of each participant shall be an amount equal to 7.65% per annum on the amount of their respective participations instead of 6% per annum as provided in the aforesaid participation agreement executed by Henry Orenstein."

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

34. To aid in procuring its subordinated financing, as well as other future financings, Topper in 1967 retained the services of a predecessor of defendant Shearson Hayden Stone, Inc. ("Hayden Stone").

ADMITS

36. Hayden Stone acted on Topper's behalf in arranging six separate private placements of Topper's securities and two public offerings of Topper common stock during the period from late 1967 through the end of 1971.

ADMITS

37. The principal purpose of each financing during the period 1967 through 1971 was to raise additional working capital or to repay previous financings which continuing operations could not repay.

DENIES EXCEPT ADMITS THAT THE PRINCIPAL PURPOSE OF EACH FINANCING DURING THE PERIOD 1967 THROUGH 1971 WAS TO RAISE ADDITIONAL WORKING CAPITAL OR TO REPAY PREVIOUS FINANCINGS.

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

38. Hayden Stone arranged the first private placement of Topper securities in late 1967 and early 1968 which consisted, among other things, of $2,220,000 in junior participations in bank loans.

ADMITS

39. In the second private placement, Hayden Stone arranged the renegotiation and repayment of an $8 million note in July 1968 by borrowing $1,945,000 from a group of private investors on a secured basis subordinated to the Banks.

ADMITS

40. To raise additional working capital and to permit the repurchase of 255,000 shares of common stock, Hayden Stone arranged a third private placement for Topper in July 1969 under which Topper borrowed $2,079,000 from a group of private investors.

ADMITS

41. In the fourth private placement, Hayden Stone arranged for Topper to borrow $5,200,000 from a group of private investors in December 1969 and January 1970.

ADMITS

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*Citibank response appears in capital letters.

42. On June 3, 1970, Hayden Stone acted as representative of the underwriters in Topper's first public offering of 440,000 shares of common stock at a price of $5 a share; part of the proceeds from this underwriting, as well as from a contemporaneous offering of 190,000 shares at $4.625 to Topper employees, were applied to repay the $2,079,000 borrowed in the third private placement.

ADMITS

43. The fifth private placement was arranged by Hayden Stone in late 1970 in order to induce holders of the subordinated notes issued pursuant to the fourth private placement to extend the maturity date of those notes from June 30, 1971 to January 31, 1972.

ADMITS

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*Citibank response appears in capital letters.

44. On April 29, 1971 Hayden Stone again acted as representative of the underwriters in arranging for the second public offering of 750,000 shares of Topper common stock at a price of $10.50 per share; the closing date of the April 29, 1971 public offering was May 6, 1971; the net proceeds were delivered by Hayden Stone to Topper and thereafter remitted to Citibank.

DENIES EXCEPT ADMITS THAT ON APRIL 29, 1971 HAYDEN STONE AGAIN ACTED AS REPRESENTATIVE OF THE UNDERWRITERS IN ARRANGING FOR THE SECOND PUBLIC OFFERING OF 750,000 SHARES OF TOPPER COMMON STOCK AT A PRICE OF $10.50 PER SHARE; THE CLOSING DATE OF THE APRIL 29, 1971 PUBLIC OFFERING WAS MAY 6, 1971; THE NET PROCEEDS WERE DELIVERED BY HAYDEN STONE TO TOPPER AS DISCLOSED IN THE PRIVATE PLACEMENT BROCHURE (PX 462), AND THEREAFTER THE AMOUNT OF THE NET PROCEEDS WAS REMITTED TO CITIBANK.

45. Hayden Stone arranged for the sale of $5,250,000 of Topper Notes to plaintiffs and others in the Private Placement which closed on September 28, 1971.

ADMITS

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*Citibank response appears in capital letters.

46. Since November 30, 1950, Citibank has been party to an agreement with the Pension Fund which states, among other things, that Citibank agreed to provide the Pension Fund with investment advice with respect to any government bonds or other securities held from time to time in the custodian account or with respect to any cash held by the Pension Fund for investment (the "Agreement").

DENIES EXCEPT ADMITS THAT SINCE NOVEMBER 30, 1950, CITIBANK HAS BEEN PARTY TO AN AGREEMENT WITH THE PENSION FUND (CITIBANK EXHIBIT 12) (THE "CUSTODIAL AGREEMENT").

47. On April 3, 1959 Citibank and the Pension Fund amended the Agreement, but retained the provision which stated:

> "[Citibank] agree[s] to provide the [Pension Fund] with investment advice with respect to any government bonds or other securities held from time to time in the custodian account or with respect to any cash held by the [Pension Fund] for investment."

DENIES EXCEPT ADMITS THAT ON APRIL 3, 1959 THE PENSION FUND PREPARED AN AMENDMENT TO THE CUSTODIAL AGREEMENT (CITIBANK EXHIBIT 13) WHICH CITIBANK ACCEPTED, WHICH RETAINED THE PROVISION WHICH STATED:

> "[Citibank] agree[s] to provide the [Pension Fund] with investment advice with respect to any government bonds or other securities held from time to time in the custodian account or with respect to any cash held by the [Pension Fund] for investment."

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*Citibank response appears in capital letters.

51. For the years 1966 through 1971 the Pension Fund paid Citibank the following amounts for services rendered under the Agreement:

1966 -	$90,110.00
1967 -	72,341.50
1968 -	77,099.04
1969 -	86,080.99
1970 -	87,500.00
1971 -	96,671.00

During that period Citibank allocated 25% of those fees to investment advisory services.

ADMITS

53. Mr. Walter Jeffers, head of Citibank's Metals and Mining Department, was the liaison between Citibank and the United States Steel Corporation and its affiliates, including the Pension Fund.

ADMITS

54. Subsequent to Mr. Thompson's telephone call on August 25, 1971, Mr. Jeffers requested Mr. Edward Waldman, the Citibank officer in charge of the Factoring and Commercial Finance Division, in which the Topper account was administered, to telephone Mr. Thompson.

DENIES EXCEPT ADMITS THAT SUBSEQUENT TO MR. THOMPSON'S TELEPHONE CALL ON AUGUST 25, 1971, MR. JEFFERS REQUESTED MR. EDWARD WALDMAN, THE CITIBANK OFFICER IN CHARGE OF THE FACTORING AND COMMERCIAL FINANCE DIVISION, IN WHICH THE TOPPER SECURED LOAN ACCOUNT WAS ADMINISTERED, TO TELEPHONE MR. THOMPSON.

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK**
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

55. On August 27 Mr. Waldman of Citibank called Mr. Thompson of the Pension Fund pursuant to Mr. Jeffers' request.

ADMITS

56. Shipments of Topper toy items for the years 1968, 1969, 1970 and the first six months of 1971, as shown on Shipment Schedules annexed to the unaudited Financial Statements for the periods ending December 31, 1968, December 31, 1969, December 31, 1970 and June 30, 1971, were as follows (000 omitted):

Major Toy Items	1968	1969	1970	1971 1st 6 months
Suzy Homemaker	$11,975	$10,904	$ 6,395	$ 1,109
Rings and Things	3,820	4,352	305	--
Johnny Eagle	4,050	1,912	402	--
Johnny Toymaker	4,956	724	125	--
Johnny Service	1,966	1,136	307	--
Baby Party	4,418	342	103	--
Johnny Lightning	--	25,974	21,934	1,414
Baby Catch-A Ball	--	3,997	260	--
Dawn Dolls & Accessories	--	--	41,401	12,019
Other Toy Items*	6,966	9,436	6,266	6,577
Total Shipments	$38,151	$58,777	$77,498	$21,119

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*"Other toy items" means, for purposes of this Request for Admissions, any toy item which comprised less than 5% of the total toy shipments for either 1968, 1969 or 1970.

ADMITS

**Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

57. For the year 1968, Topper's net sales by month, as shown on the unaudited Financial Statements for 1968, were as follows:

1968	Net Sales	% of 1968 Total Net Sales
January	$ 291,000	0.8%
February	6,000	0.0%
March	678,000	1.9%
April	2,503,000	7.2%
May	2,605,000	7.4%
June	3,889,000	11.1%
July	3,873,000	11.1%
August	4,706,000	13.4%
September	4,522,000	12.9%
October	4,792,000	13.7%
November	5,310,000	15.2%
December	1,861,000	5.3%
Total	$35,036,000	100.0%

ADMITS

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

58. For the year 1969, Topper's net sales by month, as shown on the unaudited Financial Statements for 1969, were as follows:

1969	Net Sales	% of 1969 Total Net Sales
January	$ 41,000	0.1%
February	5,000	0.0%
March	1,512,000	2.8%
April	3,337,000	6.2%
May	3,639,000	6.8%
June	4,377,000	8.2%
July	4,807,000	9.0%
August	6,276,000	11.7%
September	7,160,000	13.4%
October	8,866,000	16.6%
November	8,877,000	16.6%
December	4,576,000	8.6%
Total	$53,473,000	100.0%

ADMITS

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

59. For the year 1969, Topper's net income (or loss) by month, as shown on the unaudited Financial Statements for 1970, was as follows:

1969	Net Income (or Loss)
January	$ (535,000)
February	(517,000)
March	(156,000)
April	304,000
May	312,000
June	42,000
July	165,000
August	667,000
September	1,093,000
October	1,466,000
November	(741,000)
December	402,124

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*Citibank response appears in capital letters.

(59 cont.)

FOR THE YEAR 1969, TOPPER'S NET INCOME (OR LOSS) BY MONTH, AS SHOWN FOR COMPARATIVE PURPOSES ON THE UNAUDITED FINANCIAL STATEMENTS FOR 1970, WAS AS FOLLOWS:

1969	Net Income (or Loss)
January	$ (535,000)
February	(517,000)
March	(156,000)
April	304,000
May	312,000
June	42,000
July	165,000
August	667,000
September	1,093,000
October	1,466,000
November	(741,000)
December	402,124

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*Citibank response appears in capital letters.

60. On or about November 15, 1969, the first revision of Topper's Projected Statement of Operations for 1970 (PX 1191) estimated net sales and customer collections on a monthly basis for 1970 as follows:

1970	Projected Net Sales	Projected Collections
January	$ 2,500,000	$11,650,000
February	2,600,000	1,975,000
March	3,300,000	969,000
April	5,900,000	1,126,000
May	7,700,000	5,328,000
June	9,900,000	4,165,000
July	11,000,000	5,173,000
August	12,700,000	6,823,000
September	13,900,000	8,719,000
October	14,100,000	10,510,000
November	17,200,000	11,799,000
December	5,400,000	19,594,000

ADMITS

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*Citibank response appears in capital letters.

61. During 1970, Topper revised its Projected Statement of Operations (PX 673) and estimated net sales and customer collections for the months of June through December 1970 as follows:

1970	Projected Net Sales	Projected Collections
June	$ 5,850,000	$ 2,500,000
July	$5,750,000	3,200,000
August	7,450,000	4,500,000
September	7,450,000	5,500,000
October	8,880,000	6,800,000
November	12,500,000	7,500,000
December	8,500,000	11,500,000

ADMITS

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

62. For the year 1970, Topper's net sales by month, as shown on the unaudited Financial Statements for 1970, were as follows:

1970	Net Sales	% of 1970 Total Net Sales
January	$ 835,000	1.3%
February	378,000	0.6%
March	890,000	1.4%
April	4,664,000	7.1%
May	5,834,000	8.9%
June	5,006,000	7.6%
July	6,612,000	10.0%
August	5,986,000	9.1%
September	6,649,000	10.1%
October	6,601,000	10.0%
November	8,249,000	12.5%
December	14,111,884	21.4%
Total	$65,815,884	100.0%

ADMITS

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*Citibank response appears in capital letters.

63. For the year 1970, Topper's net income (or loss) by month, as shown on the unaudited Financial Statements for 1970, was as follows:

1970	Net Income (or Loss)
January	$ (732,000)
February	(889,000)
March	(693,000)
April	172,000
May	530,000
June	391,000
July	711,000
August	759,000
September	(348,000)
October	(409,000)
November	267,000
December	258,458

ADMITS

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*Citibank response appears in capital letters.

64. For the year 1970, the amount of customer collections received by Topper, as shown on the Loan Balance page of the Loan Status Worksheets forwarded to Citibank, were as follows:

1970	Customer Collections
January	$10,450,690
February	1,793,841
March	854,023
April	762,840
May	1,537,008
June	2,060,994
July	3,959,900
August	3,815,987
September	6,128,101
October	6,073,790
November	6,485,973
December	7,154,151

ADMITS

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

65. On or about January 21, 1971, Topper prepared a Projected Statement of Operations for the period ending December, 1971 (PX 6) which estimated customer collections on a monthly basis as follows:

1971	Projected Collections
January	$10,800,000
February	1,030,000
March	1,240,000
April	1,565,000
May	5,495,000
June	3,775,000
July	4,355,000
August	6,115,000
September	6,430,000
October	8,040,000
November	10,040,000
December	13,065,000

ADMITS

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

66. During the first nine months of 1971, the amount of customer collections by Topper, as shown on the Loan Balance page of the Loan Status Worksheets (PX 333-341) forwarded to Citibank, were as follows:

1971	Customer Collections
January	$10,718,983
February	1,580,397
March	1,190,451
April	3,396,306
May	2,443,148
June	2,160,313
July	2,623,802
August	4,011,527
September	4,453,417

ADMITS

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*Citibank response appears in capital letters.

67. During the first nine months of 1971, the amount of receipts from Topper financings, as shown on the Loan Balance page of the Loan Status Worksheets forwarded to Citibank, were as follows:

Date	Amount
May 7, 1971	$ 6,361,351.50
September 20, 1971	7,000,000.00
September 29, 1971	5,250,000.00

DENIES EXCEPT ADMITS THAT DURING THE FIRST NINE MONTHS OF 1971, THE AMOUNT OF RECEIPTS FROM TOPPER FINANCINGS OTHER THAN FINANCING FROM THE LENDING BANKS, AS SHOWN ON THE LOAN BALANCE PAGE OF THE LOAN STATUS WORKSHEETS FORWARDED TO CITIBANK, WERE AS FOLLOWS:

Date	Amount
May 7, 1971	$ 6,361,351.50
September 20, 1971	7,000,000.00
September 29, 1971	5,250,000.00

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*Citibank response appears in capital letters.

68. During the first nine months of 1971, the amount of gross accounts receivable, receivables more than 60 days past due, and receivables otherwise ineligible for advances under the Finance Agreement appearing on Topper's internal records, as shown on a schedule prepared by Mr. Jack J. Rose (PX 392) from the monthly Accounts Receivable Detail Trial Balances and the Loan Status Worksheets, were as follows:

1971	Total Receivables	More than 60 Days Past Due	Ineligible For Advances
January	$ 27,981,748	$ 1,283,954	$ 15,838,175
February	26,183,622	1,753,810	8,135,594
March	28,711,522	3,334,061	7,374,367
April	27,804,661	2,494,710	7,344,231
May	27,596,127	1,592,665	6,358,044
June	33,604,999	1,268,569	8,620,017
July	33,873,285	7,244,510	13,657,171
August	35,409,280	6,987,727	14,120,246
September	41,711,879	9,554,771	17,058,391

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*Citibank response appears in capital letters.

(68 cont.)

DENIES EXCEPT ADMITS THAT DURING THE FIRST NINE MONTHS OF 1971, THE AMOUNT OF GROSS ACCOUNTS RECEIVABLE, RECEIVABLES MORE THAN 60 DAYS PAST DUE, AND RECEIVABLES OTHERWISE INELIGIBLE FOR ADVANCES UNDER THE FINANCE AGREEMENT APPEARING ON TOPPER'S INTERNAL RECORDS, AS SHOWN ON A SCHEDULE PREPARED BY MR. JACK J. ROSE (PX 392), WERE AS FOLLOWS:

1971	Total Receivables	More than 60 Days Past Due	Ineligible For Advances
January	$ 27,981,748	$ 1,283,954	$ 15,838,175
February	26,183,622	1,753,810	8,135,594
March	28,711,522	3,334,061	7,374,367
April	27,925,661	2,494,710	7,344,231
May	27,596,127	1,592,665	6,358,044
June	31,604,909	1,268,569	8,620,017
July	33,873,285	7,244,510	13,657,174
August	35,409,280	6,987,727	14,120,246
September	31,711,879	9,554,771	17,058,391

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*Citibank response appears in capital letters.

69. For the months of May through September 1971, the amount of weekly advances by the banks to Topper and the amount of weekly remittances by Topper to Citibank, as shown on the Loan Balance page of the Loan Status Worksheet, together with calculations not included in the Loan Status Work Sheets but prepared from this data showing the extent to which such advances exceeded such remittances, or vice versa, for weekly periods and on a cumulative basis from April 29, 1971 through September 29, 1971, were as follows:

1971 Weekly Period Ending	Advances	Remittances	Advances In Excess of Remittances	Cumulative Total of Advances in Excess of Remittances During These Periods
May 5	$1,350,000	$ 205,383	$1,144,617	$1,144,617
May 12	1,850,000	452,883	1,397,117	2,541,734
May 19	1,000,000	665,937	334,063	2,875,797
May 26	1,650,000	716,950	933,050	3,808,847
June 2	1,000,000	559,179	440,821	4,249,668

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*Citibank response appears in capital letters.

(69 cont.)

1971 Weekly Period Ending	Advances	Remittances	Advances In Excess of Remittances	Total of Advances In Excess of Remittances During These Periods
June 9	1,450,000	144,228	1,305,772	5,555,440
June 16	750,000	595,598	154,402	5,709,842
June 23	1,000,000	348,804	651,196	6,361,038
June 30	2,550,000	957,491	1,592,509	7,953,547
July 7	850,000	765,425	84,575	8,038,122
July 14	400,000	461,778	(61,778)	7,976,344
July 21	925,000	590,232	334,768	8,311,112
July 28	800,000	545,370	254,630	8,565,742
August 4	1,350,000	487,388	862,612	9,428,354
August 11	925,000	752,770	172,230	9,600,584
August 18	920,000	1,470,418	(550,418)	9,050,166
August 25	1,100,000	754,068	345,932	9,396,098
September 1	1,050,000	820,940	229,060	9,625,158
September 8	1,100,000	636,150	463,850	10,089,008
September 15	1,000,000	793,422	206,578	10,295,586
September 22	1,125,000	1,290,695	(165,695)	10,129,891
September 29	1,050,000	1,439,513	(389,513)	9,740,378

ADMITS

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

70. As of January 21, 1971, Topper planned one outside financing of $3 million in 1971 which was to take place in May 1971.

ADMITS

71. By early February 1971, Topper received reports from certain customers of a heavy build-up in their Dawn inventory.

ADMITS

72. On February 23, 1971 the Citibank officers responsible for the Topper account, including Mr. Edward Waldman, initialed a memorandum entitled "Advance Instructions" which set forth "overadvance privileges" for the Topper account for 1971 as follows:

> "Overadvance privileges: (These figures INCLUDE the $500 M temporary overadvance during any given month, to be made up before the end of that month

1971	
February thru March	$1,250,000
April	$1,000,000
May	$ 750,000
June and thereafter	$ 500,000."

ADMITS

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*Citibank response appears in capital

73. By February 23, 1971, Topper informed Citibank that in addition to a public offering in May it was considering another financing of $5 million from an insurance company which would take place after the May public offering.

ADMITS

74. By March 31, 1971, 44% of the non-Spring 1971 Program receivables listed on the December 31, 1970 Consolidated Balance Sheet had not been collected.

DENIES EXCEPT ADMITS THAT DURING ITS 1970 AUDIT OF TOPPER, ARTHUR YOUNG DETERMINED THAT AS OF MARCH 31, 1971, 44% OF THE NON-SPRING 1971 PROGRAM RECEIVABLES LISTED ON THE DECEMBER 31, 1970 CONSOLIDATED BALANCE SHEET HAD NOT BEEN COLLECTED.

75. By the end of April 1971, merchandise sold on extended dating terms under the Spring 1971 Program was not selling at retail as quickly as Topper anticipated.

ADMITS

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*Citibank response appears in capital letters.

77. On May 7, 1971, Topper remitted the net proceeds of its April 29, 1971 public offering of common stock, amounting to $6,361,351.50 to Citibank.

DENIES EXCEPT ADMITS THAT ON MAY 7, 1971, IN ACCORDANCE WITH A DISCLOSURE IN THE 1971 PUBLIC OFFERING PROSPECTUS WHICH WAS PART OF THE PRIVATE PLACEMENT BROCHURE (PX 462) REGARDING "USE OF PROCEEDS", TOPPER REMITTED THE NET PROCEEDS OF ITS APRIL 29, 1971 PUBLIC OFFERING OF COMMON STOCK, AMOUNTING TO $6,361,351.50, to CITIBANK.

78. On or about June 21, 1971, Topper advised Citibank that it was currently negotiating with Ford Motor Credit Corporation for a loan of $7 million (the "Ford Motor Loan") and that, in addition to the Ford Motor Loan, Hayden Stone was arranging for a private offering of convertible debentures amounting to $5 million.

ADMITS

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*Citibank response appears in capital letters.

79. On July 13 and 14, 1971 Messrs. Orenstein, Rose and Downs of Topper met with Messrs. Waldman, Lusk, and Siegel to bring Citibank up to date on current happenings at Topper and at the same time make a request for interim additional advances.

ADMITS

80. At the July 13 and 14, 1971 meeting, Citibank agreed to amend the Finance Agreement to reflect its agreement to permit temporary advances to Topper beyond the $18.5 million limit stated in the Finance Agreement.

ADMITS

83. On July 15, 1971, Citibank, Manufacturers Hanover and Topper amended the Finance Agreement. The amendment provided:

> "In accordance with the request of Topper Corporation, we have agreed to temporarily increase the overall line of credit available to the company to $21,000,000.
>
> "This increase to be available to August 15, 1971, and will include advances up to $3,000,000. in excess of our normal 80% advance against eligible assigned accounts receivable. We continue to have inventory and machinery and equipment as additional collateral.
>
> "Your agreement and acknowledgement of the above will constitute an amendment. (The Loan Agreement dated October 4, 1966, as amended and supplemented)."

ADMITS

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*Citibank response appears in capital letters.

84. On August 25, 1971, Citibank, Manufacturers Hanover and Topper again amended the Finance Agreement. The amendment provided:

> "In accordance with the request of Topper Corporation, we have agreed to continue to September 30, 1971, the temporary increase in the overall line of credit available to the company of $21,000,000.
>
> "The increased amount will include advances up to $4,800,000. in excess of our normal 80% advance against eligible assigned accounts receivable. We continue to have inventory and machinery and equipment as additional collateral.
>
> "Your agreement and acknowledgement of the above will constitute an amendment to the Loan Agreement dated October 4, 1966, as amended and supplemented."

ADMITS

85. On or about August 24, 1971, Topper prepared a Schedule of Accounts With Past Due Invoices (PX 381) which showed that 53 customers who were sold merchandise on extended dating terms under the Spring 1971 Program and early 1971 had past due invoices amounting to $13,524,137.41.

DENIES EXCEPT ADMITS THAT ON OR ABOUT AUGUST 24, 1971, TOPPER PREPARED A SCHEDULE OF ACCOUNTS WITH PAST DUE INVOICES (PX 381) WHICH SHOWED THAT 50 CUSTOMERS WHO WERE SOLD MERCHANDISE ON EXTENDED DATING TERMS UNDER THE SPRING 1971 PROGRAM HAD PAST DUE INVOICES AMOUNTING TO $12,770,155.74.

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*Citibank response appears in capital letters.

86. On or about September 14, 1971, Topper prepared a handwritten Schedule of Accounts with Past Due Invoices (PX 383) which showed that 57 Topper customers who were sold merchandise on extended dating terms under the Spring 1971 Program and early 1971 had past due invoices amounting to $15,515,684.78.

DENIES EXCEPT ADMITS THAT ON OR ABOUT SEPTEMBER 14, 1971, TOPPER PREPARED A HANDWRITTEN SCHEDULE OF ACCOUNTS WITH PAST DUE INVOICES (PX 383) WHICH SHOWED THAT 54 TOPPER CUSTOMERS WHO WERE SOLD MERCHANDISE ON EXTENDED DATING TERMS UNDER THE SPRING 1971 PROGRAM HAD PAST DUE INVOICES AMOUNTING TO $14,679,545.25.

87. On or about September 20, 1971, Topper prepared a handwritten Schedule of Accounts with Past Due Invoices (PX 386) which showed that 55 customers who were sold merchandise on extended dating terms under the Spring 1971 Program and early 1971 had past due invoices amounting to $15,140,927.62.

DENIES EXCEPT ADMITS THAT ON OR ABOUT SEPTEMBER 20, 1971, TOPPER PREPARED A HANDWRITTEN SCHEDULE OF ACCOUNTS WITH PAST DUE INVOICES (PX 386) WHICH SHOWED THAT 53 CUSTOMERS WHO WERE SOLD MERCHANDISE ON EXTENDED DATING TERMS UNDER THE SPRING 1971 PROGRAM HAD PAST DUE INVOICES AMOUNTING TO $14,388,358.68.

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
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88. The amount of extended dating sales attributable to 51 Topper customers under the Spring 1971 Program (as shown on a Listing of Extended Dated Invoices dated December 31, 1970 (PX 332)), and the amount of total past due invoices attributable to the same customers on September 20, 1971 (as shown on the September 20, 1971 Past Due Invoice Schedule), together with a calculation of these past due invoices as a percentage of Spring 1971 Program sales are as follows:

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*Citibank response appears in capital letters.

(88 cont.)

Customer	Amount of Spring 1971 Program Sales	Amount Past Due	Past Due Invoices as % of Spring Program 1971 Sales
Al Peg Distributors	$ 66,734.30	$ 69,273.77	104%
American Hardware	56,392.80	56,392.80	100%
American Leisure	402,252.83	593,000.00	147%
American Toy Co.	128,433.84	234,735.06	183%
Arlans	352,343.30	355,686.98	101%
Ayr Way Stores	241,206.34	241,206.34	100%
Blatt Distributing	1,050,982.35	1,362,383.06*	130%
Chapman Harkey	60,296.37	133,429.69	221%
Circus World	50,691.54	76,072.25	150%
Child World	100,342.08	96,487.71	96%
Consolidated Detroit	132,641.94	300,682.74	227%
Consolidated St. Louis	88,370.82	174,719.41	198%
Davis Brothers	567,668.63	724,268.76	128%
Eastern Toy	226,442.09	190,313.45	84%
Elmex	117,218.94	90,030.74	77%
Federal Wholesale	492,564.93	503,738.53	102%
Forchheimer	50,493.35	51,202.92	101%
Alex Forst & Sons	228,132.16	262,827.53	115%
Globe Stationery	184,245.77	332,163.58	180%
Globe Wholesale	358,402.21	840,524.78	235%
Globe, L.N.	87,374.33	151,462.84	173%
Grandway	214,233.28	571,917.28	267%
Greenman Bros.	573,254.91	74,881.22	13%

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*Information regarding this customer derives from a special schedule prepared by Topper on September 15, 1971 (PX 384).

RESPONSE OF CITIBANK*
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(88 cont.)

Customer	Amount of Spring 1971 Program Sales	Amount Past Due	Past Due Invoices as % of Spring Program 1971 Sales
Hays Merchandise	46,516.16	108,676.33	234%
S. N. Horowitz	57,840.83	115,400.22	200%
M. W. Kasch Co.	216,203.28	151,020.90	70%
E. J. Korvette	503,034.82	1,019,831.37	203%
L & H Sales	161,904.36	286,268.95	177%
Lash Distributors	530,744.83	377,671.06	71%
Mark Distributors	91,963.18	81,081.99	88%
Milton D. Myer	159,371.35	265,709.59	167%
National Merchandise	70,090.92	241,384.15	344%
Northern Specialty	349,890.48	517,162.93	148%
Pensick & Gordon	34,359.50	241,369.49	702%
Pittsburgh Wholesale	169,888.21	139,849.63	82%
A. Ponnock, Inc.	294,665.73	432,273.75	147%
S & H Wholesale	107,571.45	119,303.96	111%
S & M Company	155,877.26	142,804.30	92%
Shepher Distributors	661,328.45	715,956.97	108%
Skaggs Stone	63,325.07	86,185.10	136%
Star Toy	145,152.34	135,480.07	93%
Tamaron	420,163.86	465,027.96	111%
Tee Vee Toys	850,410.76	677,119.60	80%
Thebault Olsen	71,801.41	110,067.94	153%
Times Square Stores	388,824.94	416,256.70	107%

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*Citibank response appears in capital letters

(88 cont.)

Customer	Amount of Spring 1971 Program Sales	Amount Past Due	Past Due Invoices as % of Spring Program 1971 Sales
Toy Town, U.S.A.	76,636.64	82,444.90	108%
Twin Fair	81,992.42	79,581.82	97%
Vornado	547,372.99	481,867.71	88%
Leonard Wasserman	983,653.36	1,530,836.63*	156%
Zayre Corp.	16,501.01	244,642.77	1482%
Martin Zippel	100,332.87	170,894.74	170%
Total	$13,188,137.59	$16,923,572.97	128%

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*Information regarding this customer derives from a special schedule prepared by Topper on September 15, 1971 (PX 384).

ADMITS

**Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
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89. On September 17, 1971, Topper remitted the proceeds of the Ford Loan, which was consummated as of September 17, 1971 and which amounted to $7 million, to Citibank.

DENIES EXCEPT ADMITS THAT ON SEPTEMBER 17, 1971, TOPPER REMITTED TO CITIBANK THE AMOUNT OF THE PROCEEDS OF THE FORD LOAN, WHICH WAS CONSUMMATED AS OF SEPTEMBER 17, 1971 AND WHICH AMOUNTED TO $7 MILLION.

90. On September 29, 1971, Topper remitted the entire proceeds of the Private Placement, amounting to $5,250,000, to Citibank.

DENIES EXCEPT ADMITS THAT ON SEPTEMBER 29, 1971, TOPPER REMITTED TO CITIBANK THE AMOUNT OF THE ENTIRE PROCEEDS OF THE PRIVATE PLACEMENT, AMOUNTING TO $5,250,000.

91. In December 1970, Topper customers were invoiced approximately $16 million of toys on extended credit terms of five to eight months (the "Spring 1971 Program").

ADMITS

92. At least $11 million of merchandise invoiced under the Spring 1971 Program was comprised of the Dawn line of toy dolls and accessories introduced at the 1970 Toy Fair.

ADMITS

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*Citibank response appears in capital letters.

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93. After allowing for reserves of approximately $2 million, the Spring 1971 Program accounted for approximately 22 percent of Topper's net sales for the fiscal year ending December 31, 1970; this compared with the approximately $2 million in extended dating sales reported in December 1969 which comprised less than 4 percent of Topper's net sales for 1969.

ADMITS

94. During the last four days of 1970, Topper reported at least $6.3 million, or nearly 10%, of its net sales for 1970, with $4 million, or nearly 6%, coming on December 31, 1970 (PX 467); these sales represented merchandise aboard ships leaving the Orient on those days.

DENIES EXCEPT ADMITS THAT DURING THE LAST FOUR DAYS OF 1970, TOPPER RECORDED AT LEAST $6.3 MILLION, OR NEARLY 10%, OF ITS NET SALES FOR 1970, WITH NEARLY $4 MILLION, OR 6%, COMING ON DECEMBER 31, 1970 (PX 467); THESE SALES REPRESENTED MERCHANDISE ABOARD SHIPS LEAVING THE ORIENT ON THOSE DAYS.

95. In order to induce sales under the Spring 1971 Program, Topper offered customers who ordered prior to December 31, 1970 an additional discount of 10%.

ADMITS

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*Citibank response appears in capital letters.

96. The ostensible purpose of the Spring 1971 Program was to promote toy sales of Topper products by Topper customers during the early part of 1971.

DENIES EXCEPT ADMITS THAT THE OSTENSIBLE PURPOSE OF THE SPRING 1971 PROGRAM WAS TO PROMOTE TOY SALES OF TOPPER PRODUCTS BY TOPPER CUSTOMERS ON A YEAR-ROUND BASIS.

97. The most significant sales period in the toy industry at retail is the Christmas season, traditionally considered to run from Thanksgiving through Christmas.

ADMITS

98. Because of the lead time required for a manufacturer to distribute toys to the stores in time for the Christmas season, the last effective date they can be shipped to distributors, jobbers, and certain large retailers to reach the Christmas market is the end of October or early November.

ADMITS

102. During the first quarter of 1971, Topper invoiced at least $1 million in extended dating sales.

ADMITS

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*Citibank response appears in capital letters.

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103. Apart from the Spring 1971 Program, Topper had previously made concessions to major customers who had not sold all their Topper merchandise at retail.

DENIES EXCEPT ADMITS THAT APART FROM THE SPRING 1971 PROGRAM, TOPPER HAD PREVIOUSLY MADE DISCOUNTS, REBATES FOR LARGE PURCHASES, PRICE ADJUSTMENTS AND ADVERTISING ALLOWANCES TO MAJOR CUSTOMERS WHO WERE UNABLE TO SELL ALL THEIR TOPPER MERCHANDISE AT RETAIL.

104. During the years 1969 through 1971, Topper permitted a certain number of customers to return a certain amount of non-defective merchandise unsold by customers for credit.

ADMITS

105. During the years 1969 through 1971, Topper issued credits to a certain number of customers for, among other things, rebates, price adjustments, and advertising allowances.

ADMITS

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*Citibank response appears in capital letters.

108. Prior to 1971, Topper felt on certain occasions that if it failed to grant returns of unsold merchandise to certain customers or otherwise declined to accommodate certain overstocked customers who had not sold Topper merchandise at retail, it ran the risk of losing future business with those customers.

ADMITS

109. During 1968 or 1969, Topper refused to issue credit for merchandise returned by Sears Roebuck & Company; Topper felt that as a result, it lost Sears Roebuck & Company business for a period following that refusal.

ADMITS

110. During late 1970 and 1971, Topper frequently solicited orders from customers with the understanding that it would grant the customer some form of concession at the end of the year if the customer were unable to sell a certain portion of its merchandise.

DENIES EXCEPT ADMITS THAT DURING LATE 1970 AND 1971, TOPPER FROM TIME TO TIME SOLICITED ORDERS FROM CERTAIN CUSTOMERS WITH THE UNDERSTANDING THAT IT WOULD GRANT THE CUSTOMER SOME FORM OF CONCESSION AT THE END OF THE YEAR IF THE CUSTOMER WERE UNABLE TO SELL A CERTAIN PORTION OF ITS MERCHANDISE.

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*Citibank response appears in capital letters.

111. During 1970 and 1971, Topper shipped more merchandise to certain customers than those customers had previously ordered; it did so with the understanding that it would grant the customer some form of concession at the end of the year if the customer was unable to sell the excess merchandise.

ADMITS

112. In preparing its Consolidated Statement of Operations and Consolidated Balance Sheet for each of the years 1969 through 1971, Topper accrued or reserved for the amount of credits it estimated would be granted customers for returns, discounts, rebates, price adjustments and allowances above and beyond the amount of credits already granted and recorded on its financial books and records.

DENIES EXCEPT ADMITS THAT IN PREPARING ITS CONSOLIDATED STATEMENT OF OPERATIONS AND CONSOLIDATED BALANCE SHEET FOR EACH OF THE YEARS 1969 THROUGH 1971, TOPPER ACCRUED OR RESERVED FOR THE AMOUNT OF CREDITS IT ESTIMATED WOULD BE GRANTED CUSTOMERS FOR RETURNS, DISCOUNTS, REBATES FOR LARGE PURCHASES, PRICE ADJUSTMENTS AND ALLOWANCES ABOVE AND BEYOND THE AMOUNT OF CREDITS ALREADY GRANTED AND RECORDED ON ITS FINANCIAL BOOKS AND RECORDS.

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*Citibank response appears in capital letters.

113. The amount of accruals or reserves established by Topper for unrecorded credits increased from $4,688,949 for the year ending December 31, 1969 to $8,551,870 for the year ending December 31, 1970 (PX 1038).

DENIES EXCEPT ADMITS THAT THE AMOUNT OF ACCRUALS OR RESERVES ESTABLISHED BY TOPPER FOR CREDITS NOT RECORDED ON ITS FINANCIAL BOOKS AND RECORDS INCREASED FROM $4,688,949 FOR THE YEAR ENDING DECEMBER 31, 1969 TO $8,551,870 FOR THE YEAR ENDING DECEMBER 31, 1970 (PX 1038).

114. In calculating the reserves and accruals for 1970 Topper altered the method of estimating two reserves, the reserve for discounts and allowances and the reserve for advertising and rebates, from that used in 1969.

ADMITS

115. According to calculations by Arthur Young (PX 1031), the effect of altering the method for estimating the amount of reserves for discounts and allowances and advertising and rebates was to increase the amount of sales, profits, and receivables reported on Topper's Consolidated Statement of Operations and Consolidated Balance Sheet for the year ending December 31, 1970 by $1,950,000.

ADMITS

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*Citibank response appears in capital letters.

116. According to calculations by Arthur Young (PX 1017), Topper accepted or agreed to accept approximately $2 million in merchandise returns during the first quarter of 1971, an amount which exceeded the reserve for returns established at December 31, 1970 by $329,000.

ADMITS

118. The amount of credits issued, accrued or reserved for returns, rebates, discounts and allowances represented the difference between the amount of Topper's "gross sales" and its "net sales".

ADMITS

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*Citibank response appears in capital letters.

119. The amount of Topper's gross sales, net sales and credits issued, accrued, or reserved for returns, rebates, discounts and allowances for the period 1965 through 1970 (PX 460 & 1015) together with a calculation of credits as a percent of gross sales prepared from this data were as follows (000 omitted):

Period Ending	Gross Sales	Credits or Reserves	Net Sales	Credits as % of Gross Sales
1965	$70,008	$12,073	$57,935	17.2%
1967*	37,162	6,289	30,873	16.9%
1967**	35,458	5,165	30,293	14.6%
1968	41,303	6,267	35,036	15.2%
1969	62,541	8,818	53,723	14.1%
1970	83,272	18,894	64,378	22.7%

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*Thirteen month period from January 1, 1966 through February 4, 1967.

**Eleven month period from February 5, 1967 through December 31, 1967.

ADMITS

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*Citibank [illegible]

122. During 1970 and 1971, Topper permitted certain customers to exchange one item of unsold merchandise for another.

DENIES EXCEPT ADMITS THAT DURING 1970 AND 1971, TOPPER PERMITTED CERTAIN CUSTOMERS ON OCCASION TO EXCHANGE ONE ITEM OF UNSOLD MERCHANDISE FOR ANOTHER.

123. During 1970 and 1971, Topper permitted certain customers to exchange one item of unsold merchandise for credit against any order of additional merchandise of comparable dollar value in the future.

DENIES EXCEPT ADMITS THAT DURING 1970 AND 1971, TOPPER PERMITTED CERTAIN CUSTOMERS ON OCCASION TO EXCHANGE ONE ITEM OF UNSOLD MERCHANDISE FOR CREDIT AGAINST ANY ORDER OF ADDITIONAL MERCHANDISE OF COMPARABLE DOLLAR VALUE IN THE FUTURE.

125. Topper's practice of permitting merchandise exchanges existed in 1968; during the years 1969 and 1970 the practice became more extensive.

DENIES EXCEPT ADMITS THAT TOPPER'S PRACTICE OF PERMITTING CERTAIN MERCHANDISE EXCHANGES EXISTED IN 1968; DURING THE YEARS 1969 AND 1970 THE PRACTICE BECAME MORE EXTENSIVE.

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*Citibank response appears in capital letters.

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126. Topper's largest customer, S.S. Kresge Company, ordered merchandise in 1968, 1969 and 1970 subject to the right to exchange any merchandise ordered for another merchandise of equivalent dollar value.

ADMITS

127. The first exchange program initiated by Topper on a company-wide basis was the Johnny Lightning exchange program in 1970.

ADMITS

128. In 1970, Topper authorized certain customers to return certain items in the Johnny Lightning line in exchange for other such items regardless of quantity, style, or date of manufacture.

ADMITS

129. The amount of merchandise exchanges recorded by Topper in 1970 and 1971 was reflected by a negative (or parenthetic) adjustment on the Analyses of Shipment Schedule attached to the monthly unaudited Financial Statements.

ADMITS

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*Citibank response appears in capital letters.

130. The amount of merchandise returns attributable to the Johnny Lightning exchange program, as shown on the "Analysis of Shipments - Net" schedule to the unaudited Financial Statement dated December 31, 1970, was $1,592,000.

ADMITS

131. To induce sales pursuant to the Spring 1971 Program, Topper in November and December 1970 agreed with certain customers to permit the practice of exchanges in a letter confirming the customer's extended dating order.

ADMITS

132. Orenstein approved the initial exchange letter drafted by Topper in late 1970; and thereafter Mr. Frederick Pierce, Topper's Vice President-Sales, issued similar exchange letters to certain Topper customers.

ADMITS

133. In late 1970 and early 1971 Pierce and other Topper officers confirmed the exchange privilege in writing to at least 26 customers who ordered pursuant to the Spring 1971 Program.

DENIES EXCEPT ADMITS THAT IN LATE 1970 AND EARLY 1971 PIERCE AND OTHER TOPPER OFFICERS CONFIRMED THE EXCHANGE PRIVILEGE IN WRITING TO 26 CUSTOMERS WHO ORDERED PURSUANT TO THE SPRING 1971 PROGRAM.

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*Citibank response appears in capital letters.

135. Topper issued additional letters in 1971 confirming the exchange privilege.

DENIES EXCEPT ADMITS THAT TOPPER ISSUED SOME LETTERS IN 1971 CONFIRMING THE EXCHANGE PRIVILEGE.

136. An unknown amount of merchandise ordered under the Spring 1971 Program was exchanged by Topper customers at the 1971 Toy Fair.

ADMITS

137. In 1971 Topper failed to record credits for certain merchandise returns made pursuant to the exchange program.

ADMITS

139. Merchandise invoiced under the Spring 1971 Program subject to letters confirming a future exchange privilege were reported as sales and income in Topper's Consolidated Statement of Operations for the period ending December 31, 1970.

ADMITS

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*Citibank response appears in capital letters.

140. Topper first warehoused merchandise for its customers in the New York Terminal Warehouse as early as 1967.

ADMITS

141. The New York Terminal Warehouse was situated on Topper's premises adjacent to its own inventory location.

ADMITS

142. In 1968 Topper agreed to warehouse merchandise for two principal customers, S. S. Kresge Company and J. C. Penney, in the New York Terminal Warehouse (the "1968 Warehouse Program").

ADMITS

143. Under the 1968 Warehouse Program, Topper typically received a blanket order from the customer; transferred merchandise pursuant to the order to the New York Terminal Warehouse; shipped the merchandise upon the customer's request from its own inventory, not from that stored in the warehouse; and then credited the customer's warehouse account for the amount of merchandise shipped from its own inventory.

ADMITS

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*Citibank response appears in capital letters.

144. During the years 1968, 1969, 1970 and 1971, Topper reported a sale when merchandise was transferred to the New York Terminal Warehouse.

DENIES EXCEPT ADMITS THAT DURING THE YEARS 1968, 1969, 1970 AND 1971, TOPPER REPORTED A SALE AT THE TIME THAT MERCHANDISE WAS TRANSFERRED TO THE NEW YORK TERMINAL WAREHOUSE.

145. At the end of 1969, Topper sold Kresge approximately $400,000 of merchandise which was shipped into the New York Terminal warehouse. Under this arrangement, Kresge had "the right to substitute (dollar for dollar) any merchandise on [its] order against any Topper merchandise before releasing shipment to Kresge" stores; "[a]ll bonded warehousing costs [were] to be borne by Topper . . . and insurance [was to be] paid by Topper"; and Topper had the right to remove Kresge's merchandise from the New York Terminal Warehouse.

DENIES EXCEPT ADMITS THAT AT THE END OF 1969, TOPPER SOLD KRESGE APPROXIMATELY $400,000 OF MERCHANDISE WHICH WAS SHIPPED INTO THE NEW YORK TERMINAL WAREHOUSE. UNDER THIS ARRANGEMENT, KRESGE HAD "THE RIGHT TO SUBSTITUTE (DOLLAR FOR DOLLAR) ANY MERCHANDISE ON [ITS] ORDER AGAINST ANY TOPPER MERCHANDISE BEFORE RELEASING SHIPMENT TO KRESGE" STORES: "[A]LL BONDED WAREHOUSING COSTS [WERE] TO BE BORNE BY TOPPER . . . AND INSURANCE [WAS TO BE] PAID BY TOPPER".

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*Citibank response appears in capital letters.

146. In 1970 Topper permitted Kresge to return at least 50% of the merchandise which had been transferred to the New York Terminal Warehouse in 1969.

DENIES EXCEPT ADMITS THAT IN 1970 TOPPER PERMITTED KRESGE TO RETURN 50% OF THE MERCHANDISE WHICH HAD BEEN TRANSFERRED TO THE NEW YORK TERMINAL WAREHOUSE IN 1969.

147. The reason Topper permitted Kresge to return 50% of the New York Terminal merchandise in 1970 was to induce Kresge to place further orders in late 1970 and early 1971.

ADMITS

148. On May 14, 1970, Topper's Board of Directors approved the renewal of a contract with the New York Terminal Warehouse Company ("NYTCO") for the period April 1, 1970 through March 31, 1973.

ADMITS

149. Under the April 1, 1970 contract with NYTCO, Topper agreed to lease space on its premises to NYTCO; NYTCO in turn agreed to accept for storage therein the property tendered by Topper "to an extent consistent with the capacity of [its] premises and with standard public warehouse practice." Topper agreed to pay NYTCO certain charges and fees for operation of the New York Terminal Warehouse.

ADMITS

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*Citibank response appears in capital letters.

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150. Topper leased space on its premises to NYTCO for $1 a year; Topper also agreed to provide NYTCO with all necessary labor for the handling, storage and safekeeping of property deposited or tendered for storage.

DENIES EXCEPT ADMITS THAT TOPPER AGREED TO PROVIDE NYTCO WITH ALL NECESSARY LABOR FOR THE HANDLING, STORAGE AND SAFEKEEPING OF PROPERTY DEPOSITED OR TENDERED FOR STORAGE.

151. Under the Spring 1971 Program, $7,128,683.34 of the approximately $16 million in merchandise ordered by Topper customers was transferred to the New York Terminal Warehouse and another warehouse located in Clearfield, Utah. As of December 31, 1970, $3,120,470.52 (PX 996) of this merchandise was in transit to the New York Terminal Warehouse from the Orient; another $1,187,859.23 (PX 1061) was in transit from the Orient to the Clearfield, Utah Warehouse; the remaining $2,820,353.59 (PX 974) was reportedly in the physical custody of the New York Terminal Warehouse.

ADMITS

152. However, a portion of the $2,820,353.59 reportedly stored in the New York Terminal Warehouse as of December 31, 1970 was Kresge merchandise which was not in fact transferred to the terminal warehouse until at least mid-January 1971.

ADMITS

*Citibank response appears in capital letters.

153. The amount of Kresge merchandise not transferred to the New York Terminal Warehouse until mid-January 1971 was estimated from $200,000 by the manager of the Arthur Young audit, Mr. Errol Cook, to $1 million by the staff accountant who personally audited the physical inventory, Mr. Ivan Samuels.

ADMITS

155. Arthur Young adopted special tests to audit the New York Terminal Warehouse transactions in connection with its audit of Topper's books and records at December 31, 1970.

ADMITS

156. The terms of the warehouse program adopted by Topper at the end of 1970 for the Spring 1971 Program were embodied in two separate sets of agreements, one between Topper and certain of its customers (customarily entitled "Spring Promotion Warehouse Agreement") and one between such customers and NYTCO (the "NYTCO-Customer Agreements").

ADMITS

157. Pursuant to the Spring Promotion Warehouse Agreements, Topper delivered goods to New York Terminal Warehouse on behalf of such customers.

ADMITS

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*Citibank response appears in capital letters.

158. Under the Spring Promotion Warehouse Agreements, all warehousing costs were assumed by Topper through September 1, 1971.

ADMITS

159. Under the Spring Promotion Warehouse Agreements, Topper provided insurance to cover all merchandise located in the New York Terminal Warehouse.

ADMITS

161. Customers who had merchandise stored in the New York Terminal Warehouse were from time to time permitted to substitute a different item from that originally stored in the warehouse prior to the time of shipment from the warehouse.

ADMITS

162. Topper agreed with at least 23 customers that merchandise stored in the New York Terminal Warehouse was to be paid only as those customers withdrew the merchandise from the warehouse, or with certain of these customers, if not sold, transferred by Topper to another customer or exchanged for different merchandise.

ADMITS

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*Citibank response appears in capital letters.

163. At least 13 customers who had merchandise stored in the New York Terminal Warehouse on their behalf under the Spring 1971 Program also had letters confirming a future exchange privilege with respect to that merchandise.

DENIES EXCEPT ADMITS THAT THIRTEEN CUSTOMERS WHO HAD MERCHANDISE STORED IN THE NEW YORK TERMINAL WAREHOUSE ON THEIR BEHALF UNDER THE SPRING 1971 PROGRAM ALSO HAD LETTERS CONFIRMING A FUTURE EXCHANGE PRIVILEGE WITH RESPECT TO THAT MERCHANDISE.

164. Topper established a reserve in its 1970 financial statements of $1,457,178.60 (PX 975) against 100 percent of the profit attributable to the $2,820,353.59 in merchandise reportedly stored in the New York Terminal Warehouse as of December 31, 1970.

ADMITS

165. Topper failed to create any reserve for the additional $4,308,329.75 of merchandise in transit to the New York Terminal Warehouse and Clearfield, Utah Warehouse from the Orient at the end of 1970. Had such a reserve been established, Topper's net income would have been reduced by 50%, or approximately $2.2 million, for the fiscal year ending December 31, 1970.

ADMITS

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
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166. The $4,308,329.75 of merchandise in transit to the New York Terminal Warehouse and the Clearfield, Utah Warehouse was reported as sales, income, and receivables in Topper's Consolidated Statement of Operations and Consolidated Balance Sheet for the period ending December 31, 1970.

ADMITS

167. To induce additional sales in 1971, Topper offered warehousing as part of its normal sales program to certain customers at the 1971 Toy Fair. Topper arranged for warehousing facilities at locations in Pennsylvania, Maryland, Illinois, Florida, Utah as well as Woodbridge, New Jersey.

DENIES EXCEPT ADMITS THAT TO INDUCE ADDITIONAL SALES IN 1971, TOPPER OFFERED WAREHOUSING AS PART OF ITS NORMAL SALES PROGRAM TO CERTAIN CUSTOMERS AT THE 1971 TOY FAIR. TOPPER FROM TIME TO TIME ARRANGED FOR WAREHOUSING FACILITIES AT LOCATIONS IN CLEARFIELD, UTAH AND WOODBRIDGE, NEW JERSEY.

168. Warehousing terms offered in 1971 were generally the same as those provided for under the Spring 1971 Program, except the 1971 program involved merchandise sold at Toy Fair for Christmas 1971 and provided for removal from the warehouses by October 31, 1971.

ADMITS

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*Citibank response appears in capital letters.

169. In several instances, Topper shipped an unknown amount of merchandise to outside warehouses in 1971, and recorded the transactions as sales, pursuant to which the customer agreed to store the merchandise for other Topper customers who might subsequently order the merchandise; customers who stored this merchandise received a 9% commission.

ADMITS

170. During the first quarter of 1971, Topper transferred an additional $1,013,707.54 of merchandise to the New York Terminal Warehouse (PX 1000).

ADMITS

171. By March 31, 1971, approximately $5.9 million of the approximately $7.0 million of merchandise stored in the New York Terminal Warehouse by that date had been shipped (PX 1000).

ADMITS

172. Between January 1, 1971 and August 31, 1971, Topper transferred $5,573,579.04 of merchandise to the New York Terminal and Woodbridge warehouses (PX 1001).

ADMITS

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*Citibank response appears in capital letters.

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--11-5-75

174. The manager of the 1971 Arthur Young audit calculated that if Topper had established a reserve against the profit attributable to the unshipped portion of the $9,715,515 of merchandise in the New York Terminal and Woodbridge warehouses on August 31, 1971, the $333,614 profit reported on the August 31, 1971 unaudited Financial Statement would have been a loss of $2,141,472 (PX 1085).

DENIES EXCEPT ADMITS THAT THE MANAGER OF THE 1971 ARTHUR YOUNG AUDIT CALCULATED THAT IF TOPPER HAD ESTABLISHED A RESERVE AGAINST THE PROFIT CALCULATED AS 50% OF THE SALE PRICE ATTRIBUTABLE TO THE UNSHIPPED PORTION OF THE $9,715,515 OF MERCHANDISE IN THE NEW YORK TERMINAL AND WOODBRIDGE WAREHOUSES ON AUGUST 31, 1971, THE $333,614 PROFIT REPORTED ON THE AUGUST 31, 1971 UNAUDITED FINANCIAL STATEMENT WOULD HAVE BEEN A LOSS OF $2,141,472 (PX 1085).

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*Citibank response appears in capital letters.

175. The nature of the collateral generated by sales pursuant to the warehouse arrangements in effect between Topper and certain of its customers was responsible for Citibank's deciding that after March 10, 1971 all future warehouse invoices would be deemed ineligible as security for loans to Topper.

DENIES EXCEPT ADMITS THAT THE NATURE OF THE COLLATERAL GENERATED BY SALES PURSUANT TO THE WAREHOUSE ARRANGEMENTS IN EFFECT BETWEEN TOPPER AND CERTAIN OF ITS CUSTOMERS WAS RESPONSIBLE FOR CITIBANK'S DECIDING ON OR ABOUT MARCH 10, 1971 THAT THEREAFTER ALL FUTURE WAREHOUSE INVOICES WOULD BE DEEMED INELEGIBLE AS SECURITY FOR LOANS TO TOPPER.

176. After March 10, 1971 Citibank required Topper to separately state the amount of bill-and-hold, or warehouse, sales represented in each daily invoice register and to separately categorize bill-and-hold accounts receivable on its monthly aging reports.

ADMITS

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*Citibank response appears in capital letters.

179. Merchandise stored in the New York Terminal and Woodbridge warehouses pursuant to the Spring 1971 Program, as well as additional shipments to those two warehouses in 1971, as reflected on Topper Terminal Warehouse Recap Schedules dated March 31, 1971 (PX 1000), August 31, 1971 (PX 1001) and September 30, 1971 (1002), remained there in 1971 as follows (000 omitted):

Date	Shipments Into Warehouse, January 1, 1971 to date	Shipments Out of Warehouse, January 1, 1971 to date	Balance Remaining In Warehouse	Percent Shipped To Customers
March 31, 1971	$ 6,953	$1,074	$5,879	15.4%
August 31, 1971	11,514	1,799	9,716	15.6%
September 30, 1971	11,795	2,773	9,022	23.5%

ADMITS

180. During 1970 and 1971, Topper redated or extended the due date for payment of certain merchandise sold by Topper in 1969 and 1970, respectively.

ADMITS

181. The purpose of redating was to give a customer who had not sold merchandise during a particular season, generally Christmas, more time to pay for merchandise.

ADMITS

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*Citibank response appears in capital letters

183. The practice of redating was employed by Topper during 1970 and 1971 than previously.

DENIES EXCEPT ADMITS THAT THE PRACTICE OF REDATING WAS EMPLOYED BY TOPPER DURING 1970 AND 1971.

184. During the first quarter of 1970, Topper redated approximately $2.5 million of receivables due on or before January 10, 1970 until September 1970.

ADMITS

185. As part of the Spring 1971 Program, Topper confirmed to certain of its Spring 1971 Program customers in writing that if merchandise under the order was not sold by the payment date specified, it would "work with [them] on additional dating."

ADMITS

187. Topper formally redated by way of letters dated March 24, 1971, approximately $2.2 million of receivables originally due January 10, 1971, pursuant to agreements reached with customers at the 1971 Toy Fair.

ADMITS

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*Citibank response appears in capital letters.

188. After Citibank initially learned of redating on or about January 15, 1970, it established a reserve of $1.5 million against the total of $2.5 million of redated receivables.

DENIES EXCEPT ADMITS THAT AFTER CITIBANK INITIALLY LEARNED OF REDATING ON OR ABOUT JANUARY 15, 1970, IT ESTABLISHED A RESERVE ON ITS BOOKS OF $1.5 MILLION AGAINST THE TOTAL OF $2.5 MILLION OF REDATED RECEIVABLES.

189. Receivables redated by Topper in early 1971 were ineligible for advances under the Finance Agreement until June 7, 1971; after that date Citibank agreed to advance 50% against redated receivables until the end of the month following the extended due date.

DENIES EXCEPT ADMITS THAT RECEIVABLES REDATED BY TOPPER IN EARLY 1971 WERE INELIGIBLE FOR ADVANCES UNDER THE FINANCE AGREEMENT UNTIL, ON OR ABOUT JUNE 7, 1971, CITIBANK AGREED TO ADVANCE 50% AGAINST REDATED RECEIVABLES UNTIL THE END OF THE MONTH FOLLOWING THE EXTENDED DUE DATE.

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*Citibank response appears in capital letters.

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190. On or about December 2, 1971, Topper for the first time publicly announced that sales and earnings for 1971 would be quite disappointing.

ADMITS

191. On or about December 19, 1971, Topper for the first time publicly announced in a letter to its shareholders that they expected to lose between $10 and $15 million in 1971.

ADMITS

193. An unknown portion of this $37 million loss was attributable to Topper's 1970 operations.

ADMITS

195. During the month of December 1971, Topper issued $18,974,778.89 in credits to Topper customers (PX 1098, 870); these credits amounted to more than two-thirds of the $29,077,290 in receivables shown on the June 30, 1971 unaudited Financial Statements of Topper.

DENIES EXCEPT ADMITS THAT DURING THE MONTH OF DECEMBER 1971, TOPPER ISSUED $18,974,778.89 IN CREDITS TO TOPPER CUSTOMERS (PX 1098, 870).

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*Citibank response appears in capital letters.

196. A schedule prepared by Topper on January 21, 1972 (PX 391) showed that in late 1971 and early 1972 Topper issued credits of $12,174,618 for merchandise returns, $2,560,986 for markdown allowances, $2,458,579 for advertising and rebate allowances, and $4,698,657 for miscellaneous concessions.

ADMITS

197. A schedule prepared by Topper in late 1972 (PX 870) showed that between September 30, 1971 and May 31, 1972, Topper issued credits of $18,269,363 for merchandise returns and $4,946,844 for other concessions and allowances.

ADMITS

198. According to a schedule prepared by Topper in late 1972 (PX 1100-B), at least $3 million of the credits issued between September 30, 1971 and May 31, 1972 were attributable to exchange privileges granted by Topper under the Spring 1971 Program.

ADMITS

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*Citibank response appears in capital letters.

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199. In December 1971, Topper issued credits amounting to $6,322,519.02 against unshipped merchandise in the New York Terminal and other warehouses (PX 1098).

ADMITS

200. An unknown portion of the approximately $2.2 million in receivables redated by Topper on March 24, 1971 were subsequently written off by Topper in late 1971 and early 1972.

ADMITS

201. On January 15, 1973, Arthur Young withdrew its certification of Topper's 1970 Financial Statements.

ADMITS

202. On May 7, 1973, Edward J. Ryan, Referee in Bankruptcy, Southern District of New York, declared and adjudged Topper a bankrupt.

ADMITS

203. The $4,250,000 of Notes sold plaintiffs in the Private Placement are now worthless.

ADMITS

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*Citibank response appears in capital letters.

204. On February 23, 1971, Citibank agreed to continue financing Topper for the year ending January 31, 1972, "subject to the terms and conditions set forth in the Financing Agreement dated October 4, 1966 as the same may have been modified and supplemented to date."

DENIES EXCEPT ADMITS THAT ON FEBRUARY 23, 1971, THE LENDING BANKS AGREED TO CONTINUE FINANCING TOPPER FOR THE YEAR ENDING JANUARY 31, 1972, "SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE FINANCING AGREEMENT DATED OCTOBER 4, 1966 AS THE SAME MAY HAVE BEEN MODIFIED AND SUPPLEMENTED TO DATE."

205. In 1971 Topper forwarded to Citibank by special courier on practically each working day a Sales Assignment Schedule showing daily invoice totals, attached to which was a computerized invoice register itemizing and totaling the invoices by customer.

ADMITS

206. In 1971 Topper regularly forwarded to Citibank by special courier a Credit Schedule for certain business days during which a credit was allowed a customer, showing the daily total of credits on merchandise returns and other items, attached to which was a computerized credit register itemizing and totaling the credits by customer and, in the case of merchandise returns, showing the number and the description of pieces returned.

ADMITS

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*Citibank response appears in capital letters

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207. In 1971 Topper forwarded to Citibank by special courier on practically each working day a Remittance Report accompanied by customers' checks and attached vouchers, if any, showing the daily total for amounts received from all customer and itemizing receipts by customer, invoice number, date of invoice and amount.

ADMITS

208. In 1971 Topper forwarded to Citibank by special courier on practically each working day all Topper invoices, with bills of lading attached if shipment was involved, itemizing toys purchased, with prices, gross sales prices, purchase agreement discount, if any, net sales prices and shipping discounts, if any, which invoices are numbered and could be tied into a sales assignment schedule and invoice register delivered generally within six days after the date on the invoices.

DENIES EXCEPT ADMITS THAT IN 1971 TOPPER FORWARDED TO CITIBANK BY SPECIAL COURIER ON PRACTICALLY EACH WORKING DAY CERTAIN TOPPER INVOICES, WITH BILLS OF LADING ATTACHED IF SHIPMENT WAS INVOLVED, ITEMIZING TOYS PURCHASED, WITH PRICES, GROSS SALES PRICES, PURCHASE AGREEMENT DISCOUNT, IF ANY, NET SALES PRICES AND SHIPPING DISCOUNTS, IF ANY, WHICH INVOICES ARE NUMBERED AND COULD BE TIED INTO A SALES ASSIGNMENT SCHEDULE AND INVOICE REGISTER DELIVERED GENERALLY WITHIN SIX DAYS AFTER THE DATE ON THE INVOICES.

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
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209. In 1971 Topper frequently forwarded to Citibank by special courier certain Topper credit memoranda showing amounts of credit adjustments to accounts of customers, the number of pieces and description of toys, if any, which were involved in the credit transaction, sometimes stating the reason for the credit (e.g., advertising allowance, trade discount), which credit memos were numbered and could be tied into a credit schedule and credit register generally dated and delivered within six days after the dates on the credit memos described therein.

ADMITS

210. In 1971 Topper forwarded to Citibank by special courier on practically each working day a Loan Status Report and accompanying Loan Status Worksheets prepared by Topper showing, among other things, the effects of the total invoices, credit and remittances for the past business day on the balance of the loan to Topper, and the effect of Topper's computations of the value of eligible accounts receivable and other collateral upon the "availability" to Topper of additional loan funds based upon the current loan balance and the applicable credit limits.

ADMITS

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*Citibank response appears in capital letters.

211. In 1971 Topper forwarded to Citibank on a monthly basis an Account Statement for each customer of Topper showing details on the customer's open debit or credit balance as of the last day of the month.

ADMITS

212. In 1971 Topper sent to Citibank on a monthly basis an Accounts Receivable Detail Trial Balance, prepared as of the last day of each month and ordinarily received by Citibank within 10 to 15 days thereafter, showing total accounts receivable and a breakdown of accounts receivable into current, 30-day (1-30 days past due), 60-day (31-60 days past due), 90-day (61 or more days past due) and "other" categories.

ADMITS

213. Each year Citibank was furnished by Topper a projection of Topper's cash requirements and collateral by month for the coming year; in late January or early February 1971 Topper prepared a Projected Statement of Operations for the period ending December 31, 1971, including a cash flow projection by month.

ADMITS

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*Citibank response appears in capital letters.

214. Citibank from time to time compared Topper's projections against actual performance.

DENIES EXCEPT ADMITS THAT CITIBANK ON OCCASION COMPARED TOPPER'S PROJECTIONS AGAINST ACTUAL PERFORMANCE AS REPORTED BY TOPPER.

215. To enable ready oversight of the Topper account, Citibank used certain data received from Topper each business day to prepare practically each working day during the months of May through September 1971 computerized and handwritten loan advance sheets ("Advance Sheets") reflecting, among other things, certain transactions concerning Topper since the preparation of the previous report.

DENIES EXCEPT ADMITS THAT TO ENABLE READY OVERSIGHT OF THE TOPPER ACCOUNT, CITIBANK USED CERTAIN DATA RECEIVED FROM TOPPER EACH BUSINESS DAY TO PREPARE PRACTICALLY EACH WORKING DAY DURING THE MONTHS OF MAY THROUGH SEPTEMBER 1971 COMPUTERIZED AND HANDWRITTEN LOAN ADVANCE SHEETS ("ADVANCE SHEETS") REFLECTING, AMONG OTHER THINGS, CERTAIN TRANSACTIONS CONCERNING TOPPER SINCE THE BEGINNING OF THE MONTH IN WHICH THE ADVANCE SHEET WAS PREPARED.

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*Citibank response appears in capital letters.

216. The Advance Sheets showed, among other things, the amount of past due and ineligible receivables, gross and net collections, sales, credit and adjustments, other collateral, if any, the prior accounts receivable balance, and the amount of availability for advances from which Topper's request for funds could be approved under existing loan formula.

DENIES EXCEPT ADMITS THAT THE ADVANCE SHEETS SHOWED, AMONT OTHER THINGS, GROSS AND NET COLLECTIONS, SALES, CREDITS AND ADJUSTMENTS, OTHER COLLATERAL, IF ANY, THE PRIOR ACCOUNTS RECEIVABLE BALANCE, THE AMOUNT OF PAST DUE AND INELIGIBLE RECEIVABLES, AND THE AMOUNT OF AVAILABILITY FOR ADVANCES FROM WHICH TOPPER'S REQUEST FOR FUNDS COULD BE APPROVED UNDER THE EXISTING LOAN FORMULA.

217. The purpose of the Advance Sheets was, among other things, to determine the amount of Topper's eligible collateral to serve as a guide for the amount of availability for advances from which Topper's requests for funds could be approved under the existing loan formula.

DENIES EXCEPT ADMITS THAT THE PURPOSE OF THE ADVANCE SHEET WAS, AMONG OTHER THINGS, TO DETERMINE THE AMOUNT OF TOPPER'S LOAN BALANCE AND COLLATERAL TO SERVE AS A GUIDE FOR THE AMOUNT OF AVAILABILITY FOR ADVANCES FROM WHICH TOPPER'S REQUEST FOR FUNDS COULD BE APPROVED UNDER THE EXISTING LOAN FORMULA.

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*Citibank response appears in capital

218. In 1971 the financial information relating to the amount of the prior receivable balance, sales, credits, collections, past due and ineligible receivables, as well as the amount of advances to Topper, collections, and the prior and current loan balance were stated in Participation Statements forwarded to Manufacturers Hanover on a weeekly basis.

DENIES EXCEPT ADMITS THAT IN 1971, THE AMOUNT OF THE PRIOR RECEIVABLE BALANCE, SALES, CREDITS, COLLECTIONS, PAST DUE AND INELIGIBLE RECEIVABLES, AS WELL AS THE AMOUNT OF ADVANCES TO TOPPER, COLLECTIONS, AND THE PRIOR AND CURRENT LOAN BALANCE WERE STATED IN PARTICIPATION STATEMENTS FORWARDED TO MANUFACTURERS HANOVER ON A WEEKLY BASIS.

219. Citibank Advance Sheets for selected days during the months of May through September 1971 showed the amount of (a) accounts receivable 61 days or more past due, (b) accounts receivable otherwise ineligible for advances, and (c) the loan formula's amount of availability for advances for which Topper's request for funds could be approved (or the amount of funds advanced over the lending limits set by Citibank via the existing loan formula, hereinafter "over-advances"), as follows:

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*Citibank response appears in capital letters.

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances)
May 6, 1971	$ 7,561,179	$ 1,304,166	($ 4,405,339)
May 7, 1971	7,565,550	1,832,174	1,435,920
May 14, 1971	7,467,651	2,085,981	820,328
May 21, 1971	7,429,454	2,154,704	375,109
May 27, 1971	7,388,659	2,388,886	(358,613)
June 4, 1971	6,468,978	2,636,639	(1,338,810)
June 11, 1971	3,749,096	2,624,428	442,888
June 18, 1971	3,635,806	2,632,397	329,250
June 24, 1971	3,619,746	3,171,655	404,291
July 2, 1971	3,506,130	5,449,065	27,664
July 9, 1971	3,506,130	5,462,195	(297,101)
July 23, 1971	3,539,782	5,659,645	(1,126,046)
July 30, 1971	3,539,782	5,738,538	(662,615)
August 6, 1971	3,539,782	5,906,340	(1,049,828)
August 13, 1971	9,520,409	4,382,112	(4,407,819)
August 20, 1971	9,536,812	4,158,423	(4,518,369)
August 27, 1971	9,536,812	4,428,868	(5,052,302)
September 3, 1971	9,536,812	4,775,849	(4,512,935)
September 10, 1971	9,536,812	4,775,849	(4,546,618)
September 17, 1971	9,327,742	4,773,486	(3,917,270)
September 24, 1971	9,302,062	138,038	(2,308,953)
September 28, 1971	9,302,602	138,038	(1,237,027)
September 29, 1971	9,302,602	138,038	4,722,140

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*Citibank response appears in capital letters.

(219 cont.)

DENIES EXCEPT ADMITS THAT CITIBANK ADVANCE SHEETS FOR EACH BUSINESS DAY DURING THE FIRST NINE MONTHS OF 1971 SHOWED THE AMOUNT OF (a) ACCOUNTS RECEIVABLE 61 DAYS OR MORE PAST DUE, (b) ACCOUNTS RECEIVABLE OTHERWISE INELIGIBLE FOR ADVANCES, AND (c) THE AMOUNT OF AVAILABILITY FOR ADVANCES FOR WHICH TOPPER'S REQUESTS FOR FUNDS COULD BE APPROVED (OR THE AMOUNT OF FUNDS ADVANCED IN EXCESS OF THE LENDING LIMITS SET BY THE LENDING BANKS VIA THE EXISTING LOAN FORMULA, HEREINAFTER "OVER-ADVANCES") AS FOLLOWS:

Date	(a) Receivables 61 Days Or More Past Due	(b) Otherwise Ineligible Receivables	(c) Available for Advances (or Over-Advances)
1/4/71	$ 3,832,221	$ 2,450,907	$ (543,497)
1/5/71	3,832,221	3,773,373	(645,333)
1/6/71	3,832,221	3,883,316	(786,432)
1/7/71	3,832,221	3,464,863	(738,752)
1/8/71	3,832,221	3,461,160	(1,145,917)
1/11/71	3,832,221	3,440,548	(1,151,260)
1/12/71	3,832,221	3,440,548	(1,362,005)
1/13/71	3,832,221	3,417,432	(1,414,151)
1/14/71	3,832,221	3,417,432	(1,432,097)
1/15/71	3,832,221	2,645,263	(1,450,808)
1/18/71	3,582,156	2,580,208	(1,580,755)
1/19/71	3,582,156	2,580,208	(1,534,708)
1/20/71	2,580,208	3,582,156	(1,512,008)
1/21/71	2,580,208	3,299,156	(1,375,211)

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*Citibank response appears in capital letters

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances)
1/22/71	$ 3,285,313	$ 2,580,208	$ (1,169,233)
1/25/71	3,181,052	2,910,757	(1,166,130)
1/26/71	4,739,985	4,394,732	(856,180)
1/27/71	4,430,639	4,381,664	(1,063,168)
1/28/71	4,252,639	4,161,664	(918,583)
1/29/71	4,154,397	4,129,374	(1,360,159)
2/1/71	4,154,394	4,129,374	(1,965,301)
2/2/71	4,154,394	4,129,374	(1,950,384)
2/3/71	4,118,588	4,129,372	(1,979,535)
2/4/71	4,092,964	4,140,866	(2,027,397)
2/5/71	4,092,964	4,140,866	(2,430,185)
2/8/71	4,092,964	4,068,125	(2,706,669)
2/9/71	4,092,964	4,372,182	(3,550,245)
2/10/71	4,092,964	4,372,887	(4,124,822)
2/11/71	4,092,964	4,372,887	(3,691,763)
2/16/71	4,558,395	4,006,879	(3,042,820)
2/17/71	4,558,395	4,497,555	(4,186,820)
2/18/71	4,558,395	4,497,555	(4,383,224)
2/19/71	4,558,395	4,497,555	(4,455,904)
2/22/71	4,282,155	4,497,555	(447,187)
2/23/71	4,282,155	47,963	(189,051)
2/24/71	4,261,067	47,963	354,725
2/25/71	4,261,067	47,963	(174,339)
2/26/71	4,261,067	47,963	(137,073)
3/1/71	4,261,067	47,963	(220,719)

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances)
3/2/71	$ 4,261,067	$ 47,963	$ 113,826
3/3/71	4,261,067	47,963	299,520
3/4/71	4,261,067	47,963	(962,902)
3/5/71	4,261,067	47,963	(2,550,715)
3/8/71	4,261,067	3,067,963	(2,804,276)
3/9/71	4,261,067	3,067,963	(1,573,655)
3/10/71	4,261,067	3,915,194	(796,597)
3/11/71	422,879	993,983	708,201
3/12/71	4,228,791	996,347	(815,892)
3/15/71	4,228,791	996,347	(63,505)
3/16/71	3,915,194	996,347	(312,201)
3/17/71	4,228,791	1,042,693	(2,415,803)
3/18/71	$ 5,372,455	$ 1,040,977	$ (182,756)
3/19/71	5,372,455	1,040,977	6,145
3/22/71	5,372,455	1,040,977	(186,973)
3/23/71	5,372,455	1,040,977	(263,048)
3/24/71	5,240,281	1,053,853	(326,328)
3/25/71	5,226,806	1,128,338	(607,972)
3/26/71	5,226,806	1,128,338	(612,426)
3/29/71	5,226,806	1,128,338	(645,955)
3/30/71	5,226,806	1,160,751	(530,049)

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*Citibank response appears in capital letters.

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances)
3/31/71	$ 5,226,806	$ 1,160,751	$ (433,792)
4/1/71	5,197,294	1,292,829	(292,120)
4/2/71	5,185,100	1,305,311	379,949
4/5/71	5,172,382	1,578,194	(10,667)
4/6/71	5,172,386	1,578,194	(100,040)
4/7/71	5,026,914	1,578,194	(125,900)
4/8/71	4,927,398	1,578,194	(172,123)
4/9/71	4,927,398	1,578,194	(272,124)
4/12/71	4,927,398	1,578,194	(2,177,435)
4/13/71	7,843,625	1,359,072	(2,692,695)
4/14/71	7,839,602	1,361,513	(2,654,282)
4/15/71	7,797,847	1,362,105	(3,134,687)
4/16/71	7,787,686	1,537,952	(3,157,607)
4/19/71	7,787,686	1,738,045	(3,338,609)
4/20/71	7,787,686	1,738,045	(3,375,727)
4/21/71	7,787,686	1,766,794	(3,264,242)
4/22/71	7,608,335	1,722,644	(3,396,619)
4/23/71	7,608,335	1,722,644	(3,399,964)
4/26/71	7,608,335	1,722,644	(3,400,163)
4/27/71	7,596,160	1,794,230	(3,452,579)

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances
4/28/71	$ 7,596,160	$ 1,794,230	$ (3,348,802)
4/29/71	7,591,079	1,838,698	(3,511,210)
4/30/71	7,591,079	1,939,116	(3,880,504)
5/3/71	7,591,079	1,961,315	(3,839,260)
5/4/71	7,591,079	1,798,206	(4,180,488)
5/5/71	7,591,079	1,804,166	(4,454,871)
5/6/71	7,586,179	1,804,166	(4,205,641)
5/7/71	7,565,550	1,832,874	1,235,920
5/10/71	7,565,550	1,834,968	452,594
5/11/71	7,364,712	2,025,468	362,288
5/12/71	7,495,728	2,085,981	689,469
5/13/71	7,467,651	2,085,981	828,706
5/14/71	7,467,651	2,085,981	620,328
5/17/71	7,467,651	2,085,981	559,785
5/18/71	7,429,454	2,085,981	738,475
5/19/71	7,429,454	2,140,848	398,581
5/20/71	7,429,454	2,150,848	205,887
5/21/71	7,429,454	2,154,704	75,103
5/22/71	7,429,454	2,181,635	(137,181)
5/25/71	7,388,459	2,322,699	(82,631)
5/25/71	7,388,659	2,322,699	(610,616)
5/27/71	7,388,659	2,388,886	(458,613)
5/28/71	7,359,227	2,420,941	(638,198)

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*Citibank response appears in capital letters.

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances)
6/1/71	$ 7,359,227	$ 2,420,931	$ (1,583,590)
6/2/71	7,145,359	2,880,644	(1,746,534)
6/3/71	6,931,878	2,846,457	(1,303,668)
6/4/71	6,468,978	2,636,839	(1,338,810)
6/5/71	6,468,978	2,640,911	(1,707,027)
6/8/71	5,928,528	2,639,791	(535,238)
6/9/71	3,974,835	2,639,791	(291,770)
6/10/71	3,824,835	2,624,428	302,527
6/11/71	3,749,096	2,642,428	292,888
6/12/71	3,749,096	2,626,560	276,934
6/15/71	3,749,096	2,626,560	170,544
6/16/71	3,650,079	2,626,560	128,644
6/17/71	3,635,806	2,632,397	124,281
6/18/71	3,635,806	2,632,397	129,250
6/21/71	3,635,806	2,641,391	(17,904)
6/22/71	3,635,806	3,002,253	(65,582)
6/23/71	3,619,746	3,146,105	(55,012)
6/24/71	3,619,746	3,171,655	104,291
6/25/71	3,619,746	3,255,806	328,265
6/28/71	3,619,746	3,255,806	260,695
6/29/71	3,619,746	4,091,295	(298,230)
6/30/71	3,619,746	4,091,295	(687,560)

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*Citibank response appears in capital letters.

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances
7/1/71	$ 3,619,746	$ 4,249,214	$ (964,858)
7/2/71	3,506,130	5,449,065	(227,664)
7/6/71	3,506,130	5,564,641	(2,154,998)
7/7/71	3,506,130	5,565,308	(1,316,483)
7/8/71	3,506,130	5,462,195	(858,951)
7/9/71	3,506,130	5,462,195	(797,101)
7/12/71	3,506,130	5,526,880	(335,958)
7/13/71	3,506,130	5,526,880	(382,375)
7/14/71	3,479,587	5,752,096	(541,810)
7/17/71	3,479,587	5,752,096	(305,817)
7/18/71	3,479,587	5,541,918	(632,583)
7/19/71	3,479,587	5,541,918	(971,650)
7/20/71	3,479,587	5,546,773	(1,037,137)
7/21/71	3,643,578	5,509,939	(1,274,480)
7/22/71	3,643,578	5,509,939	(1,241,998)
7/23/71	3,539,782	5,654,645	(1,226,046)
7/26/71	3,539,782	5,659,645	(791,697)
7/27/71	3,539,782	5,659,645	(790,159)
7/28/71	3,539,782	5,658,645	(734,971)
7/29/71	3,539,782	5,738,538	(758,857)
7/30/71	3,539,782	5,738,538	(872,615)

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*Citibank response appears in capital letters

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligibles Receivables	Available for Advances (or Over-Advances)
8/2/71	$ 3,539,782	$ 5,738,538	$ (1,488,326)
8/3/71	3,539,782	5,957,945	(1,129,584)
8/4/71	3,539,782	5,906,340	(1,329,584)
8/5/71	3,539,782	5,906,340	(1,291,497)
8/6/71	3,539,782	5,906,340	(1,224,828)
8/9/71	3,539,782	5,906,340	(1,293,334)
8/10/71	3,539,782	5,906,340	(1,374,520)
8/11/71	3,539,782	5,906,340	(1,320,971)
8/12/71	3,539,782	5,906,340	(1,257,175)
8/13/71	9,520,409	4,382,112	(4,607,819)
8/16/71	9,520,409	4,209,901	(4,329,283)
8/17/71	9,520,409	4,209,901	(4,815,278)
8/18/71	9,609,751	4,158,423	(4,757,990)
8/19/71	9,536,812	4,158,423	(4,755,615)
8/20/71	9,536,812	4,158,423	(4,768,369)
8/23/71	9,536,812	4,158,423	(4,646,997)
8/24/71	9,536,812	4,237,552	(4,731,581)
8/25/71	9,536,812	4,237,552	(4,686,751)
8/26/71	9,536,812	4,427,708	(5,041,275)
8/27/71	9,536,812	4,428,868	(5,302,302)

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*Citibank response appears in capital letters

(219 cont.)

Date	Receivables 61 Days Or More Past Due	Otherwise Ineligible Receivables	Available for Advances (or Over-Advances
8/30/71	$ 9,536,812	$ 4,428,868	$ (4,908,183)
8/31/71	9,536,812	4,430,668	(4,831,104)
9/1/71	9,536,812	4,430,668	N.A.
9/2/71	9,536,812	4,775,849	(4,544,162)
9/3/71	9,536,812	4,775,849	(4,712,935)
9/7/71	9,536,812	4,775,849	(4,729,755)
9/8/71	9,536,812	4,775,849	(4,731,238)
9/9/71	9,536,812	4,775,849	(4,603,020)
9/10/71	9,536,812	4,775,849	(4,646,618)
9/13/71	9,536,812	4,775,849	(4,864,255)
9/14/71	9,470,436	4,775,849	(4,766,502)
9/15/71	9,470,436	4,775,849	(4,907,333)
9/16/71	9,327,242	4,773,486	(4,798,046)
9/17/71	9,327,242	4,773,486	(4,167,270)
9/20/71	9,302,602	4,773,486	(3,925,777)
9/21/71	9,302,602	4,773,486	(2,950,930)
9/22/71	9,302,602	138,083	(2,674,316)
9/23/71	9,302,602	138,083	(2,755,130)
9/24/71	9,302,602	138,083	(2,508,953)
9/27/71	9,302,602	138,083	(1,798,450)
9/28/71	9,302,602	138,083	(1,537,027)
9/29/71	9,302,602	138,083	4,322,140
9/30/71	9,302,602	138,083	4,386,100

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*Citibank response appears in capital letters

220. Mr. Edward Waldman reviewed and initialed Citibank Advance Sheets dated June 2, June 3, June 7, July 26, August 17, August 18, August 23, August 26, 1971 on the next business day following preparation of such Advance Sheets.

DENIES EXCEPT ADMITS THAT MR. EDWARD WALDMAN REVIEWED AND INITIALED CITIBANK ADVANCE SHEETS DATED JUNE 2, JUNE 3, JUNE 7, AUGUST 17, AUGUST 18, AUGUST 23, AUGUST 26, 1971 ON THE NEXT BUSINESS DAY FOLLOWING PREPARATION OF SUCH ADVANCE SHEETS.

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*Citibank response appears in capital letters.

221. The amount of weekly advances by the banks to Topper and the amount of weekly collections received by Citibank from Topper as shown on the Participation Statements sent by Citibank to Manufacturers Hanover during the months of June, July and August, 1971, together with calculations not included in the Participation Statements but prepared from this data showing the extent to which such advances exceeded such collections, or vice versa, on a weekly basis and on a cumulative basis for the period May 28, 1971 through August 25, 1971, were as follows:

1971 Weekly Period Ending	Advances	Collections	Advances in Excess of Collections for the Weekly Period	Cumulative Total of Advances in Excess of Collections
June 2	$1,000,000	$ 559,179	$ 440,821	$ 440,821
June 9	1,463,587	158,142	1,305,445	1,746,266
June 16	750,000	596,597	153,403	1,899,669
June 23	1,019,000	368,214	650,786	2,550,455
June 30	2,550,000	1,071,781	1,478,219	4,028,674
July 7	600,000	767,250	(167,250)	3,861,424
July 14	400,004	597,374	(197,370)	3,664,054
July 21	1,175,002	590,561	584,441	4,248,495
July 28	800,001	548,479	251,522	4,500,017
August 4	1,350,002	487,932	862,070	5,362,087
August 11	936,000	763,771	172,229	5,534,316
August 18	920,250	1,615,096	(694,846)	4,839,470
August 25	1,127,550	754,068	373,482	5,212,952

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*Citibank response appears in capital letters.

(221 cont.)

DENIES EXCEPT ADMITS THAT THE AMOUNT OF WEEKLY ADVANCES BY THE LENDING BANKS TO TOPPER AND THE AMOUNT OF WEEKLY COLLECTIONS RECEIVED BY CITIBANK FROM TOPPER AS SHOWN ON THE PARTICIPATION STATEMENTS SENT BY CITIBANK TO MANUFACTURERS HANOVER DURING THE MONTHS OF JUNE, JULY AND AUGUST, 1971, TOGETHER WITH CALCULATIONS NOT INCLUDED IN THE PARTICIPATION STATEMENTS BUT PREPARED FROM THIS DATA SHOWING THE EXTENT TO WHICH SUCH ADVANCES EXCEEDED SUCH COLLECTIONS, OR VICE VERSA, ON A WEEKLY BASIS AND ON A CUMULATIVE BASIS FOR THE PERIOD MAY 28, 1971 THROUGH AUGUST 25, 1971, WERE AS FOLLOWS:

1971 Weekly Period Ending	Advances	Collections	Advances in Excess of Collections for the Weekly Period	Cumulative Total of Advances in Excess of Collections
June 2	$1,000,000	$ 559,179	$ 440,821	$ 440,821
June 9	1,463,587	158,142	1,305,445	1,746,266
June 16	750,000	596,597	153,403	1,899,669
June 26	1,019,000	368,214	650,786	2,550,455
June 30	2,550,000	1,071,781	1,478,219	4,028,674
July 7	$ 600,000	$ 767,250	$ (167,250)	$ 3,861,424
July 14	400,004	597,374	(197,370)	3,664,054
July 21	1,175,002	590,561	584,441	4,248,495
July 28	800,001	548,479	251,522	4,500,017
August 4	1,350,002	487,932	862,070	5,362,087
August 11	936,000	763,771	172,229	5,534,316
August 18	920,250	1,615,096	(694,846)	4,839,470
Aug. 25	1,127,550	754,068	373,482	5,212,952

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*Citibank response appears in capital letters.

RESPONSE OF CITIBANK*
TO PLAINTIFFS' REVISED
REQUESTS FOR ADMISSIONS
--11-5-75

223. Prior to August 27, 1971, Citibank Advance Sheets showed that the amount of Topper's receivables sixty-one days or more past due had increased from approximately $3.5 million at mid-July 1971 to approximately $9.5 million at mid-August 1971.

DENIES EXCEPT ADMITS THAT PRIOR TO AUGUST 27, 1971, CERTAIN CITIBANK ADVANCE SHEETS SHOWED THAT THE AMOUNT OF TOPPER'S RECEIVABLES SIXTY-ONE DAYS OR MORE PAST DUE WERE APPROXIMATELY $3.5 MILLION AT MID-JULY 1971 AND APPROXIMATELY $9.5 MILLION AT MID-AUGUST 1971.

224. Prior to August 27, 1971, Citibank Advance Sheets showed that the total amount of ineligible receivables, including past-due receivables, under the Finance Agreement had increased from approximately $9.2 million at mid-July 1971 to approximately $13.8 million at mid-August 1971.

DENIES EXCEPT ADMITS THAT PRIOR TO AUGUST 27, 1971, CERTAIN CITIBANK ADVANCE SHEETS SHOWED THAT THE TOTAL AMOUNT OF INELIGIBLE RECEIVABLES, INCLUDING PAST-DUE RECEIVABLES, WERE APPROXIMATELY $9.2 MILLION AT MID-JULY 1971 AND APPROXIMATELY $13.8 MILLION AT MID-AUGUST 1971.

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*Citibank response appears in capital letters

227. Prior to August 27, 1971, Citibank knew that twice within the past six weeks Citibank had agreed to amend the Finance Agreement to permit over-advances of $3 million and $4.8 million as a bridge loan in anticipation of the Private Placement and a loan from the Ford Motor Credit Corporation.

ADMITS

231. Prior to August 27, 1971, Waldman, Siegel and Lusk knew that Topper had from time to time redated receivables.

ADMITS

233. Prior to August 27, 1971, Waldman, Siegel and Lusk knew that Topper had from time to time stored merchandise for customers in the New York Terminal Warehouse which was situated on Topper's premises adjacent to its own inventory location.

DENIES EXCEPT ADMITS THAT PRIOR TO AUGUST 27, 1971, WALDMAN, SIEGEL AND LUSK KNEW THAT TOPPER HAD FROM TIME TO TIME STORED MERCHANDISE FOR CUSTOMERS IN THE NEW YORK TERMINAL WAREHOUSE WHICH WAS SITUATED ON PREMISES LEASED TO THE NEW YORK TERMINAL WAREHOUSE BY TOPPER ADJACENT TO ITS OWN INVENTORY LOCATION.

236. Prior to August 27, 1971, Waldman, Siegel and Lusk knew that receivables related to merchandise stored in the New York Terminal Warehouse subsequent to March 10, 1971 had been declared ineligible for advances by Citibank.

ADMITS

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*Citibank response appears in capital letters.

237. During 1971, Henry Orenstein was the President of Topper.

ADMITS

238. During 1971, David L. Downs was the Executive Vice President-Corporate Development of Topper.

ADMITS

239. During 1971, Jack J. Rose was the Senior Vice President-Finance and Secretary of Topper.

ADMITS

240. During 1971, Mason Benson was the Vice President-National Account Sales of Topper.

ADMITS

241. During 1971, Frederick S. Pierce was the Vice President-Sales of Topper.

ADMITS

242. During 1971, Julius H. Schwartz was the Vice President-Finance and Treasurer of Topper.

ADMITS

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*Citibank response appears in capital

243. During 1971, Sanford L. Obolsky was the Controller and Assistant Secretary of Topper.

ADMITS

244. During 1971, Preston Maas was an employee of Topper.

ADMITS

245. Subsequent to March 1972, Henry D. Clarke, Jr. was a Vice President of Hayden Stone who, while on a temporary leave of absence, acted as President of Topper.

ADMITS

246. Subsequent to March 1972, Roger Schlieder was Topper's Vice President-Finance.

ADMITS

247. Subsequent to March 1972, Ivan J. Samuels was an employee of Topper; during the period January 1, 1971 through April 30, 1971, Mr. Samuels was a staff accountant at Arthur Young.

ADMITS

248. During 1971, Sanford I. Weill was Chairman of the Board of Hayden Stone and a Director of Topper.

ADMITS

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*Citibank response appears in capital letters

249. During 1971, Roger S. Berlind was Chief Executive Officer of Hayden Stone and a Director of Topper.

ADMITS

250. During 1971, Marshall S. Cogan was Vice-Chairman of the Board of Hayden Stone.

ADMITS

251. During 1971, Donald L. Stroben was Executive Vice President of Hayden Stone.

ADMITS

252. During 1971, Conrad K. Sterrett was an employee of the Hayden Stone Corporate Finance Department.

ADMITS

253. During 1971, Jay R. Inglis was an employee of the Hayden Stone Corporate Finance Department.

ADMITS

254. During 1971, Francis J. Byrnes was an employee of the Hayden Stone Corporate Finance Department.

ADMITS

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*Citibank response appears

255. During 1970, Frank Biondi was an employee of the Hayden Stone Corporate Finance Department.

ADMITS

256. During 1971, James Ledbetter was the Chairman of the Executive Committee of Bernstein-Macaulay.

ADMITS

257. During 1971, Edward Waldman was a Vice President of the Citibank Factoring and Commercial Finance Department.

ADMITS

258. During 1971, Albert J. Lusk was an Assistant Vice President of the Citibank Factoring and Commercial Finance Department.

ADMITS

259. During 1971, David L. Holzman was a Vice President of the Citibank Factoring and Commercial Finance Department.

ADMITS

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*Citibank response appears in capital letters.

260. During 1971. Morton J. Siegel was an Assistant Vice President of the Citibank Factoring and Commercial Finance Department.

ADMITS

261. During 1971, Salvatore A. Botte was a partner of Arthur Young.

ADMITS

262. Subsequent to July 1971, John P. Walsh was a partner of Arthur Young; prior to July 1971, Mr. Walsh was an associate of Arthur Young.

ADMITS

263. During 1971, Erle Zoll was a staff accountant at Arthur Young.

ADMITS

264. During 1971, Errol Cook was a staff accountant at Arthur Young.

ADMITS

265. During 1971, Robert Richter was a staff accountant at Arthur Young.

ADMITS

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*Citibank response appears in capital letters.

Citibank's Responses to Hayden Stone's ("HS") Interrogatories, 8-12-74.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LESTER CONNELL, et al.,

Plaintiffs, — 72 Civ. 3272 (W.K.)

- against -

BERNSTEIN-MACAULAY, INC., et al.,

Defendants.

WILLIAM J. TAYLOR, et al.,

Plaintiffs, — 73 Civ. 4136 (M.E.F.)

- against -

BERNSTEIN-MACAULAY, INC., et al.,

Defendants.

UNITED STATES STEEL AND CARNEGIE
PENSION FUND, et al.,

Plaintiffs, — 74 Civ. 391 (E.W.)

- against -

HENRY ORENSTEIN, et al.,

Defendants.

THE 65 SECURITY PLAN PENSION FUND,

Plaintiff, — 74 Civ. 2426 (E.W.)

- against -

HAYDEN STONE, INC., et al.,

Defendants.

RESPONSE OF DEFENDANT FIRST
NATIONAL CITY BANK TO
INTERROGATORIES OF DEFENDANTS
HAYDEN STONE INC., BERNSTEIN-
MACAULAY, INC., ROGER S. BERLIND
AND SANFORD I. WEILL

Defendant First National City Bank ("Citibank") hereby responds to the interrogatories of defendants Hayden Stone Inc., Bernstein-Macaulay, Inc., Roger S. Berlind and Sanford I. Weill, dated May 10, 1974. Citibank reserves the right to object to the admission in evidence of any or all such responses on the ground that they or any of them are irrelevant and immaterial to the issues in this action, and further specifies that its responses are based upon information which it has acquired to the present date and upon the present state of its pretrial preparation; that Citibank's pretrial preparation is continuing; and that these responses are, therefore, subject to change as Citibank acquires additional information and completes review and analysis of information obtained and to be obtained, and are subject to specific objections stated in response to portions of particular interrogatories.

DEFINITIONS

A. "Person" means any natural person, any business entity (whether partnership, association or corporation), governmental entity and any department agency, bureau or political subdivision thereof.

B. "Representative" means any officer, director, agent, employee, attorney, servant or any other person presently or formerly acting for or on behalf of the person referred to in the interrogatory.

C. "Citibank" means First National City Bank and its representatives.

D. "Pension Fund" means the United States Steel and Carnegie Pension Fund, Inc. and its representatives.

E. "Topper" means Topper Corporation and its representatives.

F. "Manufacturers Hanover" means Manufacturers Hanover Trust Company and its representatives.

G. "Ford Motor Credit" means Ford Motor Credit Corporation and its representatives.

H. "Financing Agreement" means the agreement between Citibank and Topper dated October 4, 1966, as amended from time to time, by which Citibank agreed to make loans to Topper to be secured by accounts receivable of Topper.

I. "Private Placement" means the sale by Topper on September 28, 1971 of $5,250,000 of its 7-1/2% convertible subordinated debentures.

J. "U.S. Steel custodial account" means the U.S. Steel Group Trust Fund Account No. 09282403 at Citibank.

INTERROGATORY NO. 1

1. State whether FNCB is or was a party to an agreement or agreements with the U.S. Steel Pension Fund.

RESPONSE

1. Yes.

INTERROGATORY NO. 2

2. If the response to Interrogatory No. 1 is yes:

a) state the substance of all terms of the agreement or agreements;

b) state the effective date or dates of, and the period or periods covered by, such agreement or agreements;

c) identify each individual who performed or performs services or functions pursuant to the agreement or agreements on behalf of FNCB; and

d) state the nature of each service or function performed by each individual identified in response to subpart (c) hereof.

RESPONSE

2(a) and (b). See Exhibit A.

(c) and (d).

George M. Lingua, Senior Vice President and supervising officer of the Institutional Investment Division of the Investment Management Group. Attended quarterly economic meetings between representatives of Citibank and Pension Fund.

George P. Egbert, Senior Vice President and supervising officer of the Investment Research Division of the Investment Management Group. Attended quarterly economic meetings between representatives of Citibank and Pension Fund.

Leif H. Olsen, Senior Vice President and Economist, supervising officer of the Economics Department. Attended quarterly economic meetings between representatives of Citibank and Pension Fund.

A.J. Meigs, Vice President, assistant to Mr. Olsen in Economics Department.

Nolen Bailey, Vice President in Institutional Investment Division of Investment Management Group. Attended quarterly economic meetings between representatives of Citibank and Pension Fund.

Michael Pescatello, Vice President in the Personal Investment Division of the Investment Management Group until retirement on December 31, 1972. Attended quarterly economic meetings between representatives of Citibank and Pension Fund.

Floyd D. Frost, Vice President in Personal Trust Division of the Investment Management Group. Account executive of Pension Fund custodial account from 1955 until retirement on October 31, 1964. Overall administrative supervisor of account.

Glenn K. Green, Vice President. Supervising officer of the Custodial Services Division of the Investment Management Group upon retirement of Mr. Frost in 1964 until 1968 and assisted Mr. Heston thereafter until retirement on March 31, 1970.

Philip W. Heston, Vice President. Supervising officer of the Custodial Services Division of the Investment Management Group from 1968 until February, 1973.

C. Wesley Wilson, Assistant Vice President in the Custodial Services Division of the Investment Management Group, from 1955 to the present. Since 1965 account executive and overall administrative supervisor of approximately 1200 custodial accounts, including that of Pension Fund, reporting to supervising officer of the Custodial Services Division on each account. Oversees approximately 37 employees administering operational aspects of custodial accounts, including execution of advices from the account customers for payment, receipts or delivery of assets and the application of dividend credits to accounts.

Harry A. Gasteyer, Assistant Cashier. Account manager and assistant to Mr. Wilson as to operational aspects of Pension Fund custodial account, from 1967 to his retirement on June 30, 1972.

Wilfredo J. Rivera, Assistant Cashier. Assistant to Mr. Wilson from October, 1968 to the present.

Patrick Mullen, Official Assistant. Assistant to Mr. Rivera from June, 1970 to the present.

William Peyton, Performed clerical services for Messrs. Wilson and Gasteyer from April, 1970 through January, 1972.

There were, of course, other individuals who, by virtue of their close association with U.S. Steel Corporation and its affiliates, attended some of the quarterly economic meetings, and numerous persons who performed clerical or ministerial functions.

INTERROGATORY NO. 3

3. State whether FNCB was or is a party to an agreement or agreements whereby it was obligated to render investment advice to the U.S. Steel Pension Fund.

RESPONSE

3. Citibank was not and is not a party to any agreement with Pension Fund other than those referred to in answer to Interrogatory No. 2.

INTERROGATORY NO. 4

4. If the response to Interrogatory 3 is yes:

a) state the effective date or dates of, and the period or periods covered by, such agreement or agreements;

b) state whether FNCB was empowered to invest assets of the U.S. Steel Pension Fund in its own, FNCB's, discretion, or whether approval from the U.S. Steel Pension Fund was required for each investment;

c) if FNCB was empowered to invest assets of the U.S. Steel Pension Fund in its own discretion, state the amount of such assets subject to FNCB's power to invest in 1969, 1970 and 1971;

d) state the total amounts of assets invested in 1969, 1970, and 1971 by FNCB on behalf of U.S. Steel Pension Fund or by U.S. Steel Pension fund on the recommendation of FNCB;

e) as to all securities purchased or sold in 1969, 1970 and 1971 by FNCB on behalf of U.S. Steel Pension Fund or by U.S. Steel Pension Fund on the recommendation of FNCB, state: (i) the corporation issuing each security purchased or sold; (ii) the type of security purchased or sold; (iii) the amount of the security purchased or sold; (iv) the amount of proceeds from each such sale; and (v) the price paid for each such purchase;

f) identify each individual who performed services on behalf of FNCB in connection with the rendering of investment advice to, or investment of the assets of, U.S. Steel Pension Fund;

g) as to each individual identified in response to subpart (f) hereof, state: (i) the period or periods during which such person performed such services; (ii) the nature of the services performed by such individual; and (iii) such individual's position or positions with FNCB in 1969, 1970 and 1971; and

h) identify each person at U.S. Steel Pension Fund to whom FNCB communicated investment advice or information concerning investments made by FNCB on behalf of U.S. Steel Pension Fund.

RESPONSE

4. Not applicable.

INTERROGATORY NO. 5

5. State whether FNCB was a party to an agreement or agreements pursuant to which it extended loans to Topper for its own account or for the account of others.

RESPONSE

5. Yes.

INTERROGATORY NO. 6

6. If the response to Interrogatory 5 is yes:

a) state the substance of all terms of the agreement or agreements;

b) state the effective date or dates of, and the period or periods covered by, such agreement or agreements;

c) identify all parties to each such agreement;

d) state, separately for each month, the total amount of funds advanced to Topper in each month of 1969, 1970 and 1971;

e) state, separately for each month, the amount of funds repaid by Topper in each month of 1969, 1970 and 1971;

f) state, separately for each month, the amount of funds represented by accounts receivable delivered to FNCB in each month of 1969, 1970 and 1971 by Topper as security for loans;

g) identify each individual who performed services or functions pursuant to the agreement or agreements on behalf of FNCB; and

h) as to each individual identified in response to subpart (g) hereof, state: (i) the nature of the services or functions performed by such individual in connection with such agreement or agreements; (ii) the period or periods during which such individual performed such services or functions; and (iii) the position or positions held by such individual with FNCB during 1969, 1970 and 1971.

RESPONSE

6(a) through (c). See Exhibit B.

(d) and (e). See computerized Month End Account Current Reports or "accounting statements" for Topper for each month during 1969, 1970 and 1971, produced by Citibank in response to Defendants' Document Requests 7 and 8, and specifically, all items denoted "WIRE" for funds advanced to Topper and all items denoted "RR" (remittance report) for funds repaid by Topper.

(f) As Interrogatory No. 6(f) presently reads, it requests information duplicative of that requested by Interrogatory No. 6(e). Counsel for defendants advises, however, that Interrogatory No. 6(f) is intended to solicit the amounts of accountsreceivable which became eligible during each of the months of 1969 through 1971 and upon the basis of which loans were made during each such month. The records of Citibank, which express both eligible and ineligible receivables only as a cumulative figure, do not allow for the monthly amounts of eligible accounts receivables to be ascertained.

(g) and (h).

Edward Waldman, Vice President in charge of the Factoring and Commercial Finance Department from prior to 1969 through 1971. Overall supervisor of all accounts of the Department.

Harry G. Dunn, Vice President. Assistant to Mr. Waldman from prior to 1969 to the present and supervisor of operational procedures within the Factoring and Commercial Finance Department.

Albert J. Lusk, Assistant Vice President. Account manager of Topper and other loan accounts in the Factoring and Commercial Finance Department from 1969 to March, 1970. In charge of operational details and responsible for assessing the collateral and handling the requirements of account customers. Credit supervisor from March, 1970 to December, 1971. Reviewed credit policies and their implementation by account managers.

Morton J. Siegel, Assistant Vice President. Account manager of Topper and other accounts in Factoring and Commercial Finance Department from March, 1970 to the present. From prior to 1969, through March, 1970, collateral supervisor on Topper and other accounts. Responsible for processing documents and collateral, maintaining proper reserves and referring problems to account managers.

Charles Marrota, Assistant Vice President. Credit supervisor of Topper and other accounts in the Factoring and Commercial Finance Department from prior to 1969 through November, 1969.

David L. Dolson, Vice President. Commercial finance supervisor in the Factoring and Commercial Finance Department from prior to 1969 to November, 1969, responsible for credit and collateral of all accounts receivable financing accounts. Thereafter coordinated new business in the Department until retirement on February 28, 1973.

Kenneth H. Johnson, Assistant Cashier. Assistant collateral supervisor from 1969 through March, 1970. Responsible for clerical procedures, and preparation and processing of documents received from Factoring and Commercial Finance Department loan customers. Collateral supervisor from March 1970 to the present.

Murray Frankel, Assistant collateral supervisor from March, 1970 to present. Collateral processor from 1969 through March, 1970, responsible for calculating reserves, reviewing receipts and reporting to account managers and account supervisor in Factoring and Commercial Finance Department.

Theodore Schimoler, Assistant Cashier. Audit supervisor from 1969 to the present. Responsible for scheduling audits of Factoring and Commercial Finance Department customers, reviewing audits, and supervising personnel in the audit section.

There were, of course, numerous persons who performed clerical or ministerial functions.

INTERROGATORY NO. 7

7. If the response to Interrogatory 5 is yes: state whether such agreement or agreements were amended in 1969, 1970 or 1971.

RESPONSE

7. Yes.

INTERROGATORY NO. 8

8. If the response to Interrogatory 7 is yes:

a) state the date or dates on which each such amendment was made;

b) state the nature and effect of each such amendment;

c) identify the party or parties, and the individual or individuals on behalf of such party or parties, first suggesting the amendment;

d) state when each such amendment was first proposed;

e) state the effective date of each such amendment;

f) state whether any memoranda, notes or other writings were made in connection with the proposal or discussion of each such amendment; and

g) if the response to subpart (f) hereof is "yes", as to each such writing: (i) identify the person or persons making the writing; (ii) identify all persons to whom the writing or a copy thereof was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

8. See Exhibit B. See also documents relating to the loan to Topper by Ford Motor Credit in Exhibit E and documents relating to dropped shipped merchandise in Exhibit M. In all cases the initial suggestion for the amendment was made by Topper, and communicated to Citibank by either Jack Rose, Henry Orenstein or Julius Schwartz, all officers of Topper.

INTERROGATORY NO. 9

9. State whether FNCB was a party to any agreements with any persons besides Topper which referred to, pertained to or concerned loans advanced to Topper.

RESPONSE

9. Yes.

INTERROGATORY NO. 10

10. If the response to Interrogatory 9 is yes:

a) state the entire substance of each such agreement;

b) identify the parties to each such agreement:

c) state the effective date or dates of, and the periods covered by, each such agreement.

RESPONSE

10. See Exhibit C.

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INTERROGATORY NO. 11

11. Did FNCB advance loans to Topper for the account of or on behalf of others?

RESPONSE

11. Yes.

INTERROGATORY NO. 12

12. If the response to Interrogatory 11 is yes:

a) identify the person or persons for whose account or on whose behalf FNCB advanced loans to Topper;

b) as to each person identified in response to subpart (a) hereof, state, separately for each month, the amount of funds advanced to Topper by FNCB for the account of or on behalf of such person during each month of 1969, 1970 and 1971.

RESPONSE

12. See Exhibit C.

INTERROGATORY NO. 13

13. In connection with the agreement or agreements pursuant to which FNCB advanced loans to Topper, was Topper obliged to or did it, submit any reports, documents, statements or other materials to FNCB?

RESPONSE

13. Yes.

INTERROGATORY NO. 14

14. If the response to Interrogatory 13 is yes:

a) state the nature of all reports, documents, statements or other material submitted by Topper to FNCB;

b) state each date upon which such reports, documents, statements, or other material were submitted to FNCB by Topper in 1969, 1970 and 1971;

c) as to each date listed in response to subpart (b) hereof state the nature of each report, document, or statement and the nature of all other materials so received on that date;

d) state whether any such reports, documents, statements or other material was made available, or any of their contents disclosed, to any persons except Topper and FNCB; and

e) if the response to subpart (d) hereof is "yes": (i) identify the person or persons to whom such reports, documents, statements or other material were made available or their contents disclosed; (ii) state the date or dates on which they were so made available or their contents disclosed to each such person; and (iii) as to each date listed in response to subpart (ii) hereof, state the nature of each report, document or statement and the nature of all other such materials which were made available or the contents of which were revealed to each such person on each such date.

RESPONSE

14(a). Unaudited Consolidated Financial Statement and supporting schedules for each month showing the amount of finished goods and work in process as of the last day of the month and the total accounts receivable as of that day;

Sales Assignment Schedule for each business day showing daily invoice totals, attached to which was a computerized invoice register itemizing and totaling the invoices by customer

Account Statement prepared monthly for each customer of Topper showing details of the customer's open debit or credit balance as of the last day of the month;

Credit Schedule for each business day during which any credit was allowed a customer, showing the daily total of credits on merchandise returns and other items, attached to which was a computerized credit register itemizing and totalling the credits by customer and, in the case of merchandise returns, showing the number and the description of pieces returned,

Remittance Report for each business day, accompanied by customers' checks and attached vouchers, if any, showing the daily total for amounts received from all customers and itemizing receipts by customer, invoice number, date of invoice and amount;

Invoices, with bills of lading attached if shipment was involved, itemizing toys purchased, unit prices, gross sales prices, purchase agreement discounts, if any, net sales prices and shipping discounts, if any, which invoices are numbered and could be tied into a sales assignment schedule and invoice register prepared generally two to six days after the date on the invoices;

Credit Memos, showing amounts of credit adjustments to accounts of customers, the number of pieces and description of toys, if any, which were involved in the credit transaction, sometimes stating the reason for the credit (e.g., advertising allowance, trade discount), which credit memos were numbered and could be tied into a credit schedule and credit register often prepared and dated approximately two to six days after the dates on the credit memos described therein

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Loan Status Report for each business day, showing the effects of the total invoices, credit and remittances for the past business day on the balance of the loan to Topper, and the effect of Topper's computations of the value of eligible accounts receivable and other collateral upon the "availability" to Topper of additional loan funds based upon the current loan balance and the applicable credit limits;

Accounts Receivable Detail Trial Balance, prepared as of the last day of each month and ordinarily received by Citibank with 10 to 15 days thereafter, showing total accounts receivable and a breakdown of accounts receivable into current, 30-day, 60-day, 90-day and "other" categories; and

Annual *Audited Consolidated Financial Statements* and *Annual Reports* of Topper, and occasional projections of sales, collections and cash flow.

To the extent that documents referred to in this response prepared during 1969, 1970 or 1971 are in the possession of Citibank, such documents have been produced by Citibank in response to Defendants' Document Requests 9 and 19.

(b) and (c). Citibank does not know the dates when the above-listed documents were submitted, except that Citibank has produced available cover letters which accompanied Topper's delivery of same to Citibank and available envelopes in which such documents were so delivered in response to Defendants' Document Requests 9 and 19.

(d) and (e). In June, 1971 two representatives of Ford Motor Credit inspected documents. Any or all of the documents may have been inspected by federal auditors in the course of an audit of the books and records of Citibank by the United States Comptroller of the Currency.

INTERROGATORY No. 15

15. State whether, in 1969, 1970 or 1971, FNCB communicated with any of the following regarding Topper:

a) Hayden

b) Bernstein-Macaulay

c) Berlind

d) Weill

e) U.S. Steel Pension Fund

f) Connecticut Mutual

g) Arthur Young

h) Ford Motor Credit

i) Bernstein

j) Orenstein

k) Omega-Alpha Trust

l) Dallas Bank

m) Any customer of Topper

n) Any director of Topper other than Berlind, Weill and Orenstein

RESPONSE

15 (a) - (d), (f), (i), (k) - (l). No.
(e), (g), (h), (j), (m), (n). Yes.

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Citibank's REsp's to HS's Interr.

INTERROGATORY NO. 16

16. If the response to interrogatory 15 is yes:

a) state the date or dates of each such communication;

b) identify the individual or individuals participating in the communication on behalf of FNCB;

c) identify the person or persons with whom FNCB communicated;

d) state the entire substance of the communication;

e) state the present location of all such communications which were written;

f) as to each such communication that was not written, state whether any memoranda, notes or other writing was made in connection with or referring or pertaining to the communication; and

g) if the response to subpart (f) hereof is "yes", as to each such writing: (i) identify the person or persons making the writing; (ii) identify all persons to whom the writing or a copy thereof was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

Pension Fund

16 (a) through (g). See responses to Interrogatories Nos. 24, 25, 27 and 28.

Arthur Young & Company

16 (a) through (e). See Exhibit D.

(f). No.

(g). Not applicable.

Ford Motor Credit

16 (a) through (e). See Exhibit F. Morton Siegel received one or more phone calls from Ford Motor Credit in June, 1971. Shortly after the first call, two representatives from Ford Motor Credit visited Citibank two or more times and looked over Topper documents, inquiring how to coordinate information therein with data in the Topper financial statements, and inquiring about Citibank's procedures for monitoring the accounts receivable and its rules for determining eligibility of accounts receivable. On one such occasion the Ford Motor Credit people lunched with Mr. Siegel, Mr. Waldman and perhaps one other person from Citibank.

(f). No writing is in the possession of Citibank regarding the visit by Ford Motor Credit referred to in answer to (a) through (e) above or to any other oral communication between Citibank and Ford Motor Credit.

(g). Not applicable.

Henry Orenstein

16 (a) through (g). See Exhibit F. Mr. Waldman received phone calls periodically from Mr. Orenstein, requesting that Citibank loan Topper more than the authorized debt limit. The amount of money currently available based on the leading formula was also often discussed in such conversations. Mr. Lusk during 1969 and 1970, Mr. Siegel during 1970 and 1971 and Mr. Waldman occasionally had phone conversations with Mr. Orenstein as to

several matters relating to receivables. Such conversations were ordinarily initiated by Citibank in order to obtain explanations from Mr. Orenstein. Occasionally Mr. Orenstein telephoned Mr. Lack or Mr. Siegel regarding a request for an increase in Citibank's loan to Topper in excess of the authorized debt limit. When such request was refused, ordinarily Mr. Orenstein called Mr. Waldman.

David L. Downs (Director of Topper)

16 (a) through (g). See Exhibits F and G. David L. Downs, a director of Topper, was often present at meetings between representatives of Topper and Citibank. On many such occasions, Topper's products, progress, procedures, financing and the letters of credit arrangement with Manufacturers Hanover were discussed. As to any other writing which reflects a communication between Citibank and Mr. Downs, such writing is being produced separately in answer to one or more interrogatories herein or to Defendants' Document Requests.

Customers of Topper

16 (a) through (g). See confirmations of Henson Associates and related documents produced in answers to Defendants' Documents Requests 15 and 16.

INTERROGATORY NO. 17

17. State whether FNCB ever sought or obtained advice or information from any attorney or attorneys regarding Topper, its financial condition, or any other business matter regarding or pertaining to Topper.

RESPONSE

17. Yes.

INTERROGATORY NO. 18

18. If the Response to Interrogatory 17 is yes:

a) identify the attorney or attorneys from whom such information or advice was sought or obtained;

b) state the entire substance of each communication in or through which such information was sought or obtained;

c) state the date of each communication described in response to subpart (b) hereof;

d) identify each individual seeking or obtaining such advice or information on behalf of FNCB;

e) state the present location of all communications described in response to subpart (b) hereof which were written;

f) as to all communications described in response to subpart (b) hereof which were not written, state whether any memoranda, notes or other writings were made in connection with or referring to or pertaining to the communication; and

g) if the response to subpart (f) hereof is yes, as to each such writing: (i) identify the person or persons making the writing; (ii) identify each person to whom the writing, or a copy thereof, was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

18(a). Advice or information was sought or obtained from Ratheim, Hoffman, Kassell and Silverman.

(b). Citibank objects to Interrogatory No. 18(b) on the basis that the answer requested is protected by the attorney-client privilege.

(c) and (d).

(i). Letter from Ratheim, Hoffman, Kassel and Silverman to Mr. Harry G. Dunn dated March 18, 1971, with enclosures.

(ii). Letter from Ratheim, Hoffman, Kassel and Silverman to Mr. Edward Waldman dated May 20, 1971, with enclosures.

(iii). Letter from Ratheim, Hoffman, Kassel and Silverman to Mr. Morton J. Siegel dated October 7, 1971, with enclosure.

(e) Citibank files.

(f). No.

(g). Not applicable.

INTERROGATORY NO. 19

19. State whether, during 1969, 1970 or 1971, FNCB was requested to, or did, give advice, information or an opinion to any person with regard to:

a) the condition of Topper's business or financial affairs;

b) Topper's sales on extended credit terms of five months or more; or

c) the status, nature or collectibility of Topper's accounts receivable.

RESPONSE

19. Yes.

INTERROGATORY NO. 20

20. If the response to Interrogatory 19 is yes:

a) identify each individual who, on behalf of FNCB, was requested to or did give such advice, information or opinion;

b) identify each person who requested or received such advice, information or opinion;

c) state the date or dates on which such advice, information or opinions were requested or given;

d) state the entire substance of all such advice, information or opinions given;

e) state the present location of all such advice, information or opinions which were written;

f) as to all such advice, information or opinions which were not written, state whether any memoranda, notes or other writings were made in connection with or referring to or pertaining to such advice, opinions or information; and

g) if the response to subpart (f) is yes, as to each such writing: (i) identify the person or persons making the writing; (ii) identify all persons to whom the writing, or a copy thereof, was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

20(a) through (g). See Exhibit H, which is the Citibank file relating to certain requests for information about Topper. All other requests were ordinarily handled by Messrs. Lusk, Siegel or Waldman of Citibank. Occasionally, representatives of Citibank were requested to give information concerning Citibank's relationship with Topper, to which requests factual responses were given.

INTERROGATORY NO. 21

21. Except for the reports, documents, statements and material referred to in Interrogatory 13, did FNCB receive, in 1969, 1970 or 1971, any documents, information or material concerning or pertaining to Topper not available to the public?

RESPONSE

21. No.

INTERROGATORY NO. 22

22. If the response to Interrogatory 21 is yes:

a) state when such documents, information or material was received by FNCB;

b) state from whom such documents, information or material was received;

c) state the entire substance of such documents, information or material;

d) state the present location of all such documents and any of such information and material as was written;

e) as to any such material or information which was not written, state whether any memoranda, notes or other writings were made in connection with or referring or pertaining to the material or information; and

f) if the response to subpart (e) hereof is yes, as to each such writing: (i) identify the person or persons making the writing; (ii) identify the person or persons to whom the writing was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

22. Not applicable.

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INTERROGATORY NO. 23

23. State the position held and the duties performed by Walter Jeffers, for FNCB in 1971, including but not limited to services performed in connection with FNCB's business relationships with Topper and U.S. Steel Pension Fund.

RESPONSE

23. See response to Interrogatory No. 2(c) and (d).

INTERROGATORY NO. 24

24. On or about August 25, 1971, did Mr. Jeffers have a telephone conversation with a representative of U.S. Steel Pension Fund?

RESPONSE

24. Mr. Jeffers does not presently recall any such conversation.

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Citibank's Resp's to HS's Interr.

INTERROGATORY NO. 25

25. If the response to Interrogatory 24 is yes:

a) identify the representative of U.S. Steel Pension Fund with whom Mr. Jeffers spoke;

b) state the entire substance of the conversation;

c) state whether memoranda, notes or other writings were made in connection with, referring to or pertaining to the conversation; and

d) if the Response to subpart (c) hereof is yes, as to each such writing: (i) identify the person or persons making the writing: (ii) identify each person to whom the writing was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

25. Not applicable.

INTERROGATORY NO. 26

26. State the position held and the duties performed by Edward Waldman for FNCB in 1971, including but not limited to services performed in connection with FNCB's business relationships with Topper and U.S. Steel Pension Fund.

RESPONSE

26. See response to Interrogatory No. 2(c) and (d).

INTERROGATORY NO. 27

27. On or about August 27, 1971, did Mr. Waldman have a telephone conversation with a representative of U.S. Steel Pension Fund?

RESPONSE

27. Mr. Waldman recalls having had such a phone conversation during the summer of 1971.

INTERROGATORY NO. 28

28. If the response to Interrogatory 27 is yes:

a) identify the representative of U.S. Steel Pension Fund with whom Mr. Waldman spoke;

b) state the entire substance of the conversation;

c) state whether memoranda, notes or other writings were made in connection with, referring to or pertaining to the conversation; and

d) if the Response to subpart (c) hereof is yes, as to each such writing: (i) identify the person or persons making the writing; (ii) identify each person to whom the writing was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

28(a) and (b). In response to questions by Mr. Thompson, Mr. Waldman described Citibank's financial arrangement with Topper and told him the approximate amount of the loan balance, specifying the percentage basis on which loans were made against collateral. Mr. Waldman told Mr. Thompson that advances were not made against ineligible receivables and referred to sales of goods in warehouses and to "bill and hold" arrangements as being ineligible.

(c). No.

(d). Not Applicable.

INTERROGATORY NO. 29

29. State whether FNCB determined, in 1969, 1970 or 1971, that any accounts receivable of Topper were ineligible to serve as security for loans advanced to Topper.

RESPONSE

29. Yes.

INTERROGATORY NO. 30

30. If the response to Interrogatory 29 is yes:

a) state the procedure by which such determinations were made;

b) identify the individuals who participated in such determinations;

c) state to whom such determinations were communicated;

d) state whether any accounts receivable attributable to merchandise sold on extended credit terms of five months or more were determined to be so ineligible;

e) state the dates in 1969, 1970 and 1971 when each such determination was made, the amount of receivables determined to be ineligible on each such occasion and the amount of receivables attributable to merchandise sold on extended credit terms of five months or more determined ineligible on each such occasion;

f) state whether any memoranda, notes or other writings were made in connection with or referring or pertaining to any such determination or determinations; and

g) if the Response to subpart (f) hereof is yes, as to each such writing: (i) identify the person or persons making the writing; (ii) identify the person or persons to whom the writing was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

30(a). The accounts receivable of Topper which were at any time considered by Citibank as potentially ineligible to serve as security for loans to Topper may be grouped into categories as follows:

(1) Accounts receivable which were past due 60 days or more. Ordinarily such receivables were determined to be ineligible upon receipt by Citibank from Topper

of the monthly aging report, which computed the total of accounts receivable 60 to 90 days past due or 90 or more days past due, as of the last day of the preceding month. See Exhibit I.

(2) Accounts receivable of a "high debtor". While the amounts of accounts receivable of particular customers, as indicated on an invoice register or aging, were such as to prompt the Topper account executive (Mr. Lusk or Mr. Siegel during the period 1969 through 1971) to inquire of Topper regarding the nature and credit terms of any transaction substantially contributing to the high amount of receivables from any such customer, each such inquiry resulted in an explanation from Topper satisfactory to Citibank, so that accounts receivable were never in fact determined to be ineligible based solely upon such "high debtor" rationale. See Exhibit J.

(3) Accounts receivable attributable to (a) annual rebates granted by Topper to customers whose purchases from Topper were of comparatively large volume or (b) allowances such as advertising allowances. (Some types of discounts appeared on the intial invoice, so that no portion of the discount was ever deemed to be a receivable). Allowances and annual rebates ordinarily came to Citibank's attention in the form of credit memos received by Citibank after customers had deducted the rebates from their balances owing Topper and paid the difference. See Exhibit K.

(4) Accounts receivable which represented sales by Topper to a customer of goods which were stored on Topper's premises or shipped to an outside warehouse rather than to the customer at the time of the sale.

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After March 10, 1971, all such receivables were deemed ineligible as security for loans to Topper, and Topper was required to separately state the amount of bill and hold sales represented in each daily invoice register and to separately categorize bill and hold accounts receivable on its monthly aging reports. As of September 17, 1971, at the request of Ford Motor Credit, Citibank reinstated eligibility of bill and hold receivables to the extent of 50 percent of their cost (as distinguished from their sale price or receivable) value, in order to eliminate Topper's potential technical default under the Ford Motor Credit loan agreement with Topper of that date. Because Topper had been advanced in excess of accounts receivable eligible under Citibank's existing availability formula, such reinstatement, while increasing availability, did not result in Citibank's making additional advances to Topper. See Exhibit L.

(5) Accounts receivable generated by the sale of "dropped shipped merchandise". Dropped shipped merchandise sales ordinarily involved shipment of goods by a manufacturer other than Topper, located in a foreign country, directly to a customer of Topper, in which transaction Topper

acted as selling intermediary. Topper financed the importation of such merchandise through the issuance by Manufacturers Hanover of commercial letters of credit secured by such goods. Such accounts receivable were deemed ineligible by Citibank because its security interest therein was subordinate to that of Manufacturers Hanover, until Citibank received a letter from Manufacturers Hanover waiving or terminating its security interest therein (ordinarily as the letters of credit were paid). Citibank initially became aware of Topper's "dropped shipped merchandise" arrangements when it inquired of Topper regarding its receipt of invoices marked "F.O.B. Japan" or "F.O.B. Orient" or "dropped shipped merchandise" or not accompanied by bills of lading. Thereafter Topper was required by Citibank to account to it for any accounts receivable attributable to such financing arrangements. See Exhibit M.

(6) Accounts receivable for which the initial due date of January 10 of 1970 or 1971 was extended by agreement with the customer (typically formalized at the Annual Toy Fair in March of that year) eight months to a new due date of September 10 of that year. Such process, known as "redating", apparently was begun by Topper in early 1970 in response to a similar program by a major competitor of Topper. When a substantial amount of confirmations of the redating arrangements were delivered by Topper to Citibank after the 1970 Toy Fair,

the receivables were reinstated as eligible. Accounts receivable which were redated in early 1971 were considered ineligible (until paid), despite the receipt of confirmations after the 1971 Toy Fair, until on June 7, 1971, Citibank agreed to advance 50% against redated (unpaid) accounts receivable until the end of the month following the extended due date. See Exhibit N.

(7) Accounts receivable attributable to offsets and disputes between Topper and its customers as to merchandise on account of alleged defects therein or non-receipt of invoiced merchandise. Offsets came to the attention of Citibank either directly from Topper or in the course of Citibank's receipt of confirmations sent by Citibank to Topper customers.

(8) Accounts receivable known as "charge backs", which resulted when a customer purported to pay entirely an invoice with less than the amount of the invoice. If the customer received a credit for the charge back or difference, the charge back was eliminated.

(9) Accounts receivable resulting from sales on "extended dating" ("excess terms"), which were sales with terms in excess of the usual terms. A substantial amount of extended dating resulted from sales in November and December of 1970 pursuant to a contract between Topper and a customer known as a "1971 Warehouse Agreement", a "Spring Promotion Agreement" or a "Spring Promotion Warehouse Agreement". Pursuant to such an agreement Topper sold merchandise to its customer but delivered the merchandise to the New York Terminal Warehouse on Topper's

premises and other warehouses and assumed warehousing and insurance costs therefor until the merchandise was removed. The terms of sale were ordinarily five months or eight months (or a combination thereof) so that the bulk of such sales became due in May or in August, 1971. The May "extended dating" accounts receivable were not deemed ineligible. Such year end sales due in August were initially deemed ineligible but were reinstated as eligible in February, 1971. See Exhibit O.

(b) The individuals at Citibank who participated in determinations that accounts receivable of Topper were ineligible to serve as security for loans to Topper were Messrs. Lusk, Siegel and Waldman.

(c) A determination of ineligibility was ordinarily communicated to either Messrs. Orenstein, Rose, Obolsky or Schwarz.

(d) and (e). See response to Interrogatory No. 30(a).

(f) and (g). See Exhibits J through O.

INTERROGATORY NO. 31

31. State whether FNCB collected accounts receivable from customers of Topper.

RESPONSE

31. Citibank did not collect accounts receivable from customers of Topper at any time prior to 1972.

INTERROGATORY NO. 32

32. If the response to Interrogatory 31 is yes, state separately for each month of 1969, 1970 and 1971 the amounts of receivables collected in each such month.

RESPONSE

32. Not applicable.

INTERROGATORY NO. 33

33. State whether FNCB's agreement with Topper was amended at any time in July or August, 1971.

RESPONSE

33. Yes.

INTERROGATORY NO. 34

34. If the response to Interrogatory 33 is yes:

a) state the substance of each such amendment;

b) identify the individual or individuals first suggesting each such amendment;

c) as to all such amendments sought or suggested by FNCB, state FNCB's purpose in seeking or suggesting each such amendment;

d) state the substance of, and identify the participants in, all discussion, meetings or communications regarding each such amendment;

e) state whether any memoranda, notes or other writings were made in connection with or referring or pertaining to any such amendment or any discussion, meeting or communication thereon; and

f) if the Response to subpart (e) hereof is yes, as to each such writing: (i) identify the person or persons making the writing; (ii) identify the person or persons to whom the writing w - addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

34 (a) See Exhibit P.

(b) Topper first suggested each such amendment. See Exhibit P.

(c) Not applicable.

(d) through (f). See Exhibit P.

INTERROGATORY NO. 35

35. State whether FNCB received, during 1970 or 1971, unaudited monthly financial statements of Topper.

RESPONSE

35. Yes.

INTERROGATORY NO. 36

36. If the response to Interrogatory 35 is yes:

a) state each date on which such statements were received;

b) state from whom such statements were received; and

c) state the period covered by each such statement.

RESPONSE

36. See the unaudited monthly financial statements of Topper, the cover letters which accompanied Topper's delivery of same to Citibank and the envelopes in which such documents were so delivered, which have been produced by Citibank in response to Defendants' Document Requests 9 and 19.

A 1810

Citibank's Resp's to HS's Interr.

INTERROGATORY NO. 37

37. State whether FNCB reviewed any part or parts of the Purchase Agreement for the Notes.

RESPONSE

37. Yes.

INTERROGATORY NO. 38

38. If the response to Interrogatory 37 is yes:

a) identify the person or persons reviewing any part of the Purchase Agreement on behalf of FNCB;

b) state whether FNCB suggested any changes in or additions to the Purchase Agreement as it was reviewed by FNCB;

c) state whether any memoranda, notes or other writings were made in connection with or referring or pertaining to any such suggestion; and

d) if the Response to subpart (c) hereof is yes, as to each such writing: (i) identify the person or persons making the writing; (ii) identify the person or persons to whom the writing was addressed, delivered or shown; (iii) state the entire substance of the writing; (iv) state the date on which the writing was made; and (v) state the present location of the writing.

RESPONSE

38 (a). Mr. Waldman received from John Provine of White & Case and reviewed only Paragraph 12 of the Purchase Agreement regarding subordination of the Private Placement debentures to the indebtedness under the Financing Agreement.

(b). Citibank did not suggest any changes to the Purchase Agreement as a result of such review.

(c) and (d). Not applicable.

INTERROGATORY NO. 39

39. If the response to Interrogatory 38(b) is yes:

a) state the substance of all changes or additions suggested by FNCB; and

b) state whether such changes or additions were incorporated into the final version of the Purchase Agreement.

RESPONSE

39. Not applicable.

INTERROGATORY NO. 40

40. State whether FNCB, or any of its officers, directors, employees, agents, or representatives, have ever purchased or sold, or recommended the purchase or sale of the securities of Topper Corporation or of any other corporation engaged in the manufacture of children's toys.

RESPONSE

40. No person referred to herein who is still employed by Citibank has ever purchased, sold, or recommended the purchase or sale of the securities of Topper or of any corporation engaged in the manufacture of children's toys. Persons no longer employed by Citibank and other Citibank employees who had no contact with Topper or Pension Fund on behalf of Citibank were not consulted. It would be too burdensome to consult any or all other agents or representatives of Citibank with respect to this interrogatory, and the response to any such consultation would be irrelevant.

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INTERROGATORY NO. 41

41. If the response to Interrogatory 40 is yes:

a) identify the person or persons who made such purchases, sales or recommendations;

b) state the date or dates on which such purchases, sales or recommendations occurred:

c) state, in each instance the security or securities purchased, sold or recommended for purchase or sale; and

d) state whether each such instance was a purchase, sale, recommendation to purchase or recommendation to sell.

RESPONSE

41. Not applicable.

A 1815

Citibank's Resp's to HS's Interr.

Dated: New York, New York
August 21, 1974

SHEARMAN & STERLING

By ____________________
A Member of the Firm

Attorneys for Defendant
First National City Bank
53 Wall Street
New York, New York 10005
(212) 483-1000

A 1816

Citibank's Resp's to HS's Interr.

STATE OF NEW YORK
COUNTY OF NEW YORK
CITY OF NEW YORK

PHILIP W. HESTON, being duly sworn, states that he is a Vice President of First National City Bank, defendant in these actions, that he has read the foregoing responses to interrogatories, and that the foregoing responses to Interrogatories Nos. 1 through 4 are true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.

Dated: New York, New York
August 12, 1974

/s/ P. W. Heston
Philip W. Heston
Vice President
First National City Bank

Sworn to before me this
12 day of August, 1974

Notary Public

A 1817

Citibank's Resp's to HS's Interr.

STATE OF NEW YORK
COUNTY OF NEW YORK
CITY OF NEW YORK

MORTON J. SIEGEL, being duly sworn, states that he is an Assistant Vice President of Citicorp Factors, Inc., a wholly-owned subsidiary of First National City Bank, defendant in these actions, that he has read the foregoing responses to interrogatories, and that the foregoing answers to Interrogatories Nos. 5 through 22 and 29 through 39 are true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.

Dated: New York, New York
August 12, 1974

Morton J Siegel
Morton J. Siegel
First National City Bank

Sworn to before me this
12 day of August, 1974

Notary Public

A 1818

Citibank's Resp's to HS's Interr.

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF NEW YORK

EDWARD WALDMAN, being duly sworn, states that he is a Vice President of First National City Bank, defendant in these actions, that he has read the foregoing answers to interrogatories, and, that the foregoing answers to Interrogatories Nos. 26 through 28 are true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

Dated: New York, New York
August 12, 1974

/s/ Edward C. Waldman
Edward Waldman
Vice President
First National City Bank

Sworn to before me this
12 day of August, 1974

Notary Public

Q Do you recall having any such conversations with Mr. Peter Bernstein?

A No, I do not.

Q With Mr. Richard Davimos?

A No, I don't. I don't recall any conversations relating to this private placement with Bernstein, Macaulay personnel.

Q Did you participate in any meetings with the trustees or representatives of the Mass. State Carpentors Fund?

A Yes, I did.

Q When was the first? How many conversations were there?

A I believe, one.

Q When did that happen?

A It was sometime in 1972.

Q Can you be more specific?

A No, I'm sorry, I can't. In Boston.

Q Was that early in 1971?

A My guess is it would be in the first half of 1972, but I am not certain.

Q Do you recall where the meeting took place, other than just Boston?

A I believe it was in their offices, and we went change in marketing approach and in fact these $2 million of extended-term sales were booked in December of 1969. There does not appear to be any reference to the change of marketing or the types of sales being extended-term as contained in this Prospectus.

A Yes, the materiality of the particular $2 million worth of sales wasn't meaningful. As in all sales, there is a reserve for doubtful accounts. The only risk that a nine-month receivable as opposed to a three or six-month receivable -- the only additional risk is that your account will go bad in the extra three-month period.

✓

Q As a director of Topper Corporation and as an officer and director of Cogan, Berlind, Weill & Levitt, Inc., the underwriter of the June 3rd, 1970 offering, did you deliberate as to whether or not the extended-term sales which we have discussed should have been included in the Prospectus and set forth as a particular and separate item rather than included in the total sales of the company?

A No; I had no reason to question the validity of the sales.

✓

Q Were you aware of any rights of return, or whether these extended term sales were in fact consignment sales?

A No, they were not consignment sales, according to the corporation.

Q Did you make any independent inquiry as to this?

A Me personally?

Q Yes.

A No, but our Corporate Finance Department did.

Q And what was the resolution of the inquiry?

A They were assured that all sales are final and none was on consignment.

Q At the same time as the public offering referred to by Berlind Exhibit No. 20, there was also an offering to officers and employees of Topper Corporation; is that correct?

A Yes.

Q And approximately 185,800 shares were in fact offered to such persons; is that correct?

A I have to refresh my recollection. This Prospectus refers to 190,000 shares.

Q The proceeds of both the June 3rd, 1970 offering to the public and the offering to the officers and employees of Topper Corporation were used to retire the $2.079 million 8% debt as issued by the company in June of 1969; is that correct?

* * * *

(Record read.)

A I don't recall receiving any reports regarding customers of Topper Corporation. There were discussions regarding the receptivity for the individual product lines in the Topper catalog, at directors meetings and other conversations I would have.

Q Do you recall what discussions there were regarding the lines referred to as Johnny Lightning and Dawn doll?

A At what point?

Q At any point.

A Well, yes, there were great expectations for Dawn and for Johnny Lightning.

Q Were these items high profit or low-profit items?

A They were described as high-profit items.

Q Can you tell us Topper Corporation's policy toward these lines, Johnny Lightning and Dawn doll, in connection with accepting returns of unsold items in retail stores?

A I was under the impression the company did not accept returns.

BY MR. SHUKOVSKY:

Q Did the company accept exchanges?

A I am not sure of what the definition of exchange is. I think that within certain limitations, such as one customer having a heavy inventory of blue dresses and another customer having a heavy inventory of red dresses, the company would switch blues for reds, but in the same item really.

Q Did the company have any policy with regard to exchanging a product produced in one year with a product produced in a later year which would be considered a newer item in their line of merchandise?

A I am unfamiliar with that.

Q Did you ask any questions of the company or any other directors regarding this point?

A I don't recall any conversations on that.

BY MR. SCHATZ:

Q Mr. Berlind, how did you keep yourself informed of the profitability of Topper Corporation?

A At directors meetings and through the reports that were issued.

Q These reports largely included the results of the marketing efforts of the company, is that correct?

A Yes.

Q These reports also included major expenses of the company, is that correct?

* * * *

BIONDI SEC

2.5 million in receivables was redated in the first quarter of 1970?

A In the first quarter of 1970?

Q Yes.

A Redated from when?

Q Redated --

A That general statement doesn't ring a bell, let me put it that way.

Q That is, receivables redated, the due dates of that amount of receivables was redated until later in the year.

A From 19 -- receivables from 1969?

Q Yes.

A Redated to sometime in 1970?

Q Yes.

A I don't recall that. It is entirely possible that I was aware of it.

But I have no recollection of it.

Q Now, you indicated earlier, I believe, that one of the customers that you contacted during the 1970 investigation, indicated that Topper did accept returns.

Is that correct?

A He indicated that he could conceivably negotiate a return.

BICNDI SEC

Q And you don't recall which of the six that was?

A No, I don't.

Q Do you recall whether it was a jobber?

A I just don't recall. I mean, it would be just speculation on my part to tell you whether it was a jobber or a retail store or a chain.

Q Did you ask that person whether they had the right to return goods?

A Well, that's how the response came out.

Q How?

A It was as a result of that question; do you have the right to return?

Q Okay.

What specifically, again, did he say in response to that?

A Well, his answer was, "Look, this is an ongoing business and they're businessmen, too, and we don't have the right to return. But we're sitting here with a bundle of toys, you know, they don't want to see us take it in the car, so we sit down and we talk about it and we see what we can work out."

Q All right.

Did this person indicate that they had

instructions.

Q Did you ever consider requesting an opinion of counsel as to the validity of the warehouse transactions being recorded as sales in 1970?

A You are categorizing something as warehouse transactions.

Q Yes. The merchandise that was either stored in the New York Terminal Warehouse for customers or was being shipped to the New York Terminal Warehouse for customers.

A With respect to the goods that were shipped out of Topper's regular line in the United States, there was no need to go to counsel for any opinion. With respect to the goods coming from the Orient, there was a possible conflict inasmuch as the invoices were generally marked F.O.B., Elizabeth, and a question arose as to whether that was what would pertain or whether the agreement with Topper and customer that the title would pass one day out of port or sooner and it was because of that possible conflict that we asked the company to get an opinion of counsel.

Q Did you ever consider the fact that Topper had recorded the transactions relating to the merchandise either in or being shipped to the warehouse as an alteration of Topper's sales policy in 1970?

A I didn't get the beginning of that question.

Q Yes. Did you consider whether the warehouse transactions constituted an alteration of Topper's sales policy in 1970?

A No, I didn't consider it.

Q Do you know whether any other accountant at Arthur Young gave consideration to this question?

A I don't know and I wouldn't know why they would have, because even if they did alter their policy, a company has a right to alter its policy. That would have no particular accounting significance.

Q If they altered their sales policy, would this not be disclosed in the financial statements?

A I would think there are many changes in policy that are not disclosed in financial statements.

Q Would an alteration of sales policy be one which would not be disclosed?

A I don't think so. There are many sales policies that can be changed without disclosing them in your financial statement.

Q You included sales policy among those?

A I said there are many sales policies that can be changed without disclosure in financial statements.

* * * *

* * * *

Topper had written authorization from various customers to remove merchandise from the New York Terminal Warehouse?

MR. FISKE: Are you going to tell Mr. Botte for what purpose?

MR. DAILEY: It depends whether he was aware or not. If he was aware we can go on. If he was not, we can stop there and not get into the details.

A I don't know whether I was aware of it then or not.

BY MR. DAILEY:

Q I take it then you mean that this was never brought to your attention that you recall?

A That's right.

Q During the 1970 audit were you aware that Topper had booked a reserve of approximately 1.5 million dollars against accounts receivable relating either to the Extended Dating Program or to the merchandise which was in the warehouse, a point which I think you now know is a subject of some controversy?

A Yes, I was well aware of it.

Q Can we refer to it as the 1.5 million dollar reserve?

A Yes.

Q Could you tell us who first suggested that this 1.5 million dollar reserve be created?

A I believe it was at my suggestion.

Q Who did you make the suggestion to?

A Jack Rose.

Q Why did you suggest to him that a reserve -- this reserve was necessary?

A We were dealing with an important and new program and while I had been given assurances by Jack and Henry Orenstein and others that this was a -- that the sales were final and that there were no rights of return or exchange or no concessions would be made, in my judgment, I felt that because it was large, because it was new, that there was need for a reserve inasmuch as large customers, even though they don't have any rights to return or rights to any concessions, do in fact exact those at a later date when they have an opportunity to do so, especially when the company is trying to get further orders from them. I just felt that could happen, that there was a good probability and we needed a substantial reserve against that program.

Q Were there any specific prior events or circumstances which led you to this conclusion?

A I certainly took into consideration the fact that $300,000 of the prior year's merchandise stored at the warehouse were allowed to be returned. I just knew that this was a tough business, a tough business with low margins and many of the stores use these toys as lost leaders and to attract traffic in the stores and if they have some economic power ~~we~~ they use it.

Q When did you make this suggestion to Mr. Rose?

A I believe it was in -- I don't know. I think it was somewhere -- the program was in November, probably around February 1st or so.

Q What was Mr. Rose's reaction to your proposal?

A He was violently opposed to it.

Q Violently?

A Violently opposed to it.

Q Did he express himself?

A He expressed himself very definitely that he didn't need this reserve; that the sales were final; that the company wouldn't allow concessions to be made and he was very, very emphatic on that point.

Q How did you respond to his violent expression?

A I told him that he was -- the only thing he was asking for was my opinion and I had given it to him, that he needed a reserve.

Q During this this meeting or at any other time in connection with the 1970 audit, did you directly or indirectly inform Mr. Rose that unless this reserve was booked against the receivables you wouldn't certify the financial statements?

A I don't think I ever said that. I don't think I ever needed to say that. The implication was there. When I said to him, "The only thing you are buying is my opinion and I'm giving it to you." It's quite clear if he didn't comply, he wouldn't get an opinion from me.

Q After this initial discussion you had with Mr. Rose, when did you next discuss the subject of the reserve with him?

A I believe it was a week later. It could have been more than that. I believe it was about a week later when we met again on that subject.

Q What was said during the course of the second discussion?

A As I recall it now, he repeated all his points he made at the previous meeting, that he didn't need a reserve and he was opposed to it and he was opposed to it mainly because the sales were final, there were no rights of returns, there would be no returns, no allowances granted. These were hot items. These were toys that were very much in demand. They were not going to be returned or allowances made against them. He also said he felt if I persisted in my million and a half that it might even cause a distortion, because in 1971 he was, in fact, not going to lose this money and therefore he would have to bring it back into income and 1971 income would be distorted, it would be overstated.

Q You say this million and a half, by the time of the second meeting was a judgment reached as to the amount of the reserve?

A I only use it because we were talking about a reserve. There was no discussion of amounts. Just that my demand that it would be a substantial reserve. I only use the million and a half because we have categorized it as that.

Q That's right.

How did you react to his --

A I just kept a straight face and said, "You

* * * *

A Well, I'm sure I was aware of it. But I wouldn't necessarily dwell on it, because they would only be considered sales if we were satisfied that they were sales, in which case they would have to be included as sales. There is no option as to whether you want to include a sale in one year or another. You have to have some criteria by which you judge a sale has or has not taken place and you have to record it as such. Obviously as a professional accountant, I'm aware if you don't have 16 million dollars in profitable sales, your profits are going to be less or your loss is going to be larger. I don't think that has any bearing on whether a sale is a sale.

Q You testified, I believe, this morning that Arthur Young adopted special procedures for the receivables relating to the Extended Dating sales?

A Yes, sir.

Q Was the effect of the Extended Dating Program on Topper's 1970 Financials responsible in any part for your decision to adopt these special procedures?

A I'm sorry. Can I have that question again?

(Question read.)

A No, the end result wasn't the criteria. The reason for adopting the special confirmation procedures was one, to -- I knew I was going to insist on a footnote disclosing the amount and I wanted outside confirmation as to the amount. Number two, as one of the tests of whether this was a sale or not, I wanted the customers to acknowledge indebtedness for those particular sales.

Q How did you attempt to find out whether the customers acknowledged indebtedness for these sales?

A By having a separate item on the confirmation that says the extended dating sales and we attached copies of the invoices and asked them to confirm that they owed that money.

Q You have testified that the proposal for the Extended Dating section of the confirmation letter was Mr. Cook's?

A He may have originated it. I was certainly aware of it. I was not unaware of the fact he was doing this.

Q You didn't in the first instance make that recommendation?

A That's right.

Q Mr. Cook did?

A I believe so. Mr. Cook is also aware of the fact that I wanted to disclose that the amount of indebtedness under extended dating. This is a team effort, I'm trying to say. It's not a question of who originated an idea.

Q You said that customers who took merchandise under this program received an additional discount?

A I believe so, yes.

Q Do you recall what the additional discount was?

A I think it was an additional 10 percent if they took the merchandise -- took delivery of the merchandise and eight percent if it was delivered to the Terminal Warehouse.

Q Did you ever ask why a customer who placed an order for merchandise on extended dating terms on January 15th would not get the additional discount?

A I don't think I asked the question. But they explained to me that they wanted orders before December 31st. As an inducement to get the orders and get the sales moving on a more year-round basis.

Q Did they explain to you why they chose the date of December 31st?

A No.

Q Did you ask?

A No.

Q Did you believe that the date was chosen because it was the last day of the 1970 fiscal year?

A I don't think I believed it. I had no reason to attach any special significance to that date.

Q Do you recall any consideration given to reporting the 16 million dollars in extended dating transactions or any portion of them as sales in 1971?

A We gave consideration to when the sale took place and we were satisfied that they took place in '70. So I guess by doing that work we did give consideration as to whether they were '71 sales and concluded they were not. We were satisfied. We did all the work deemed necessary to satisfy ourselves that they were 1970 sales.

Q Do you know what type of merchandise was included in the Extended Dating Program?

MR. FISKE: Yes, he said that.

A I reviewed schedules with respect to two portions of that, as I mentioned before. And I was generally satisfied that it was all current merchandise. a good portion of it being these so-called hot items of Dawn and Johnnie Lightening.

Q Were you aware that the predominant amount of the Extended Dating Program was made up of these so-called hot items, Johnnie Lightening and Dawn?

A Yes, sir.

Q At the time you were aware of this, were you aware of the relative success of Johnnie Lightening in 1970 as compared to 1969?

MR. FISKE: What do you mean by "success"?

BY MR. DAILEY:

Q Well, I guess two criteria. First the extent to which Topper sold Johnnie Lightening toys in 1970 as compared to the amount they sold in 1969.

A I didn't make any comparisons. As I said, I was following these trade journals and heard many discussions around Topper as to how they were accepted in the marketplace. I didn't make any comparisons whether they were selling better or worse than in 1969.

Q Aside from any comparisons you may have not made, were you aware that Topper sold 25 million dollars worth of Johnnie Lightening toys in 1969 and sold 21 million dollars worth of Johnnie Lightening toys in 1970?

A I wasn't aware of those ~~months~~ products. I was aware that they sold Johnnie Lightening and I was aware that the trade journal said it was a hot item. I think it can still be a hot item and sell less than you sold the year before.

Q Were you aware that it did sell less in 1970 than it did in 1969?

A No, I wasn't.

Q During the 1970 audit, were you aware when the Dawn line was first introduced?

A I was aware of when it happened. I don't remember now.

Q Approximately, do you reacll how long Topper had been selling Dawn?

A I would imagine it would be about a year. I don't know that for a fact. The reason I say that that it is generally shown in its hand-made models ~~moldings~~ at a Toy Fair or something like that and you are even aware of it before that. I don't know at what point it got into high gear production and it became a best seller so to speak.

Q You said you saw or were apprised of various trade journals which reported Dawn as being the hottest selling toy?

A Yes.

Q Do you recall which toy journals they were?

A I don't remember the names now. I'm sure I

* * * *

Q Other than talking with the Topper officers, what other steps did you direct to be taken to confirm that the merchandise sold on extended credit terms were final sales and not subject to any rights of return or other concessions?

MR. FISKE: Are you asking him about steps that he specifically directed or steps that he was aware of?

BY MR. DAILEY:

Q Let's take first that you specifically directed and then if we get no place on that that you are aware of -- first, do you recall directing any specific steps to be taken?

A I recall directing Mr. Cook to get all documents or ask for all documents, to inspect them and to make whatever comparisons were necessary, including customers' orders, shipping documents, sending out confirmation letters, whatever we could audit with respect to the documents that were presented to us for inspection.

Q Other than the documents you have just mentioned, the customer orders, the shipping documents, I gather the invoices, did you request that Mr. Cook or members of his staff review the general sales files that

Topper maintained with regard to these customers?

A No. I couldn't direct which files, which set of files to go to. We made it clear that we wanted all documents related to this Extended Dating Program. Whether those documents were in one place or 10 places, we asked for those documents and I'm sure there are duplicates, no need of looking at all copies of each document, so by asking for all documents related to this program, it was then the responsibility of the officers of that company to direct us to those and to put them at our disposal.

(Short recess taken.)

BY MR. DAILEY:

Q Other than talking about Topper officers and going through the review of documents which you just explained, what other steps, if any, were taken to determine whether the Extended Dating sales were final and not subject to any right or understandings with customers?

A We relied to some extent on the correspondence with the customers. We would certainly have expected customers to indicate that they had rights or concessions made on the confirmation forms if they in fact were made.

MR. FISKE: Mr. Botte referred to correspondence in the beginning of that answer. I assume you meant confirmation?

THE WITNESS: Confirmation, yes.

BY MR. DAILEY:

Q Was any consideration given to framing the questions asked in the confirmation letter specifically in light of any possible rights which they had?

A I don't recall that there was any consideration given to that.

Q I mean just asking the customers directly whether they had any rights or understandings with regard to returns or exchanges of this merchandise?

A I don't recall there was any consideration given to expanding the confirmation request.

Q Were you aware during 1970 audit that rather substantial amounts of merchandise being shipped under the container program were being shipped to warehouses other than New York Terminal Warehouse and other to warehouses at the customers' own locations?

A No, I was not.

Q During the 1970 audit, do you recall giving any consideration to the Extended Dating transactions or the Extended Dating merchandise which was shipped

* * * *

(A short recess was taken.)

BY MR. DAILEY:

Q Mr. Botte, during the break, did you refresh your recollection as to your knowledge of Topper's redating practice?

A Yes, I have.

MR. DAILEY: Just a few more questions.

BY MR. DAILEY:

Q In light of this, I'll ask you again, when were you first aware that Topper had redated receivables?

A It was during our--the cold comfort review in the spring of 1971.

Q Were you aware during the 1970 audit that Topper had redated receivables in early January and early February?

A I don't believe so.

Q Were you ever informed that during the 1970 audit the Arthur Young staff had saived production of a schedule which would show the amount of redating?

A I'm not aware of it.

Q You became aware of redating during the April 1971 cold comfort review?

A I believe so, yes.

Q What amount of receivables were redated?

A I don't remember now.

Q You did know then?

A I believe someone showed me some schedule which had an amount on it, yes. I don't remember now what that schedule showed.

Q Did you know why Topper had redated receivables?

A No, I don't.

Q Did you know or inquire as to the type of merchandise which was redated?

A No, sir.

Q At the time you learned of redating in April, 1971, did you also learn that Topper had redated receivables in 1970?

A I may have been aware of it. I don't recall now whether that came to light at that time.

Q Do you recall inquiring as to the result or the extent to which Topper customers had paid for receivables which were redated in 1970?

A I don't recall.

Q Who informed you during the April 1971 cold comfort review that Topper redated receivables?

A All of my conversations with respect to that review were with Walsh and Cook. So it had to be either of those two men or both.

Q Do you recall what each of these two gentlemen told you in connection with the redated receivables?

A No.

Q What consideration, if any, was given to create a reserve for all or any portion of the receivables which had been redated?

A I don't recall now. But the redating--the extension of credit in itself wouldn't require reserves.

If you have someone with a good credit rating like a Kresge, who pays their bills, not a question of their ability to pay, if you grant them an extra 30 or 60 or 90 days, that in no way affects the validity of the account and wouldn't require reserves.

Q Did you ever consider during the course of your April 1971 cold comfort review whether the practice of redating was, in effect, a consignment sale?

A I never associated redating with consignment or the fact that you redated either made them a consignment or reflected on the sale. I considered the redating an extension of credit.

Q Did you consider redating a practice akin to the extended dating program.

MR. FISKE: What do you mean by "akin"?

MR. DAILEY: Similar.

A No, I didn't. I considered that redating was strictly an extension of the terms of payment of existing indebtedness. The extended dating program was a specific program under which they could get certain discounts if they bought within a time frame, that payment terms were expressed over a period of five to eight months, and I didn't associate the two transactions.

Q Did you ever consider whether the customers who had receivables redated had sold the merchandise which was related to the receivables which were redated?

A I don't think it's at all pertinent for an accountant to consider whether or not customers have sold merchandise which they have or haven't paid for. I don't think it is an auditing or accounting function.

Q As far as you were concerned, then, it wouldn't make any difference whether the customer had sold the merchandise or not?

A I think that's true.

Q During the April 1971 cold comfort review, were you aware that City Bank refused to advance money to Topper based on redated receivables in April

1971?

A No, sir

Q What consideration, if any, did you give to disclosing the fact that certain receivables had been redated in the financial statements or in the registration statement of Topper?

A We didn't feel that it needed to be disclosed. The redating didn't change the nature of the assets, didn't change it from a current to a noncurrent asset. It was a matter of extension of redating for a period of months within the normal one-year guidelines for classification of assets.

I think that's my answer. We came to a conclusion that it would not need disclosure.

Q Did any member of the Arthur Young staff suggest the fact that Topper had redated receivables should be disclosed?

A I don't believe so.

Q Who participated in the decision not to disclose redating?

MR. FISKE: You mean in the financial statements?

Q In the financial statements or in the prospectus dated April 29, 1971.

MR. FISKE: When you say "who participated," you mean who at Arthur Young?

MR. DAILEY: I don't limit it to Arthur Young.

A Oh, the only ones that I ever discussed it with were Walsh and Cook..

Q In light of your refreshed recollection on this subject, do you now recall whether the subject of redating was discussed at the underwriters' meeting which you attended in April of 1971?

You do not recall?

A No, I don't recall.

Q At the time you were informed of Topper's redating of receivables in April, 1971, do you recall asking whether they had ever redated receivables before?

A I don't recall asking.

MR. DAILEY: I have no further questions at this time.

EXAMINATION BY MR. KLEIN:

Q Mr. Botte, I represent the TAYLOR plaintiffs who have a companion action pending against the defendants. In addition to the transactions about which Mr. Dailey has been concentrating, my clients participated in two earlier transactions with Topper Corp. involving

BY MR. SHUKOVSKY:

Q Would it come under the jurisdiction of Mason Benson?

A I believe it probably would.

Q You indicated this might be one of the largest accounts of Topper, if not the largest.

A I believe that's correct.

Q You indicated earlier today you would contact, in normal financing preparations -- you would normally contact the large suppliers of merchandise to a particular company or the largest customers, is that correct?

A I believe I said when necessary.

Q Why did you not contact the Kresge Company?

A I didn't personally feel at that point that it was necessary.

Q Why?

A There was no reason to believe there was a problem. Kresge was buying Topper's toys. Various toy publications, such as Toy and Hobby World, showed Dawn No. 1 in the industry at that time. Topper's toys were highly acceptable and buyers wanted them.

Q In Berlind Exhibit 11, the prospectus dated April 29th, which you prepared in part, under the caption "Products" on pages 10 and 11, there are various cate-

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gories of Topper merchandise enumerated. Which items were the best sellers for Topper Corporation?

A May I see the exhibit?

Q Yes (handing to witness).

A If I were to rank Topper's toys as best-selling down to worst-selling for calendar 1970, I would say Dawn was the best-selling line; that the die-cast miniature cars under the name Johnny Lightning was the second best-selling line, and that the toy appliances, other dolls, various other toys -- I am not sure which ranks first without going back to my notes. I think I could do it from my notes.

Q Which would you say was the poorest-selling line?

A At that point in time I really wouldn't know without checking.

Q Are you familiar with merchandise being returned to Topper Corporation in fiscal 1970?

A You have to tell me which merchandise.

Q Can you tell me?

A Returns in general?

Q Yes.

A We understand that all of Topper's sales are net. That is, Topper had $64 million worth of sales in

1970. They in fact had sales of $68 million and $4 million worth of returns.

Q What type of merchandise was being returned to Topper?

A It is difficult to be specific, but I will use examples. Kresge has too much Dawn in red dresses and not enough in green, so they will tell Topper. Topper will go to Two Guys and see if they have green.

Q For balancing of inventory?

A Correct.

Q Beyond balancing of inventory, was Topper taking any goods back from its customers in order to keep them happy, or, pursuant to agreement or otherwise, were they taking goods back which were not being sold, for credits or what have you?

A To my knowledge, only damaged toys or things of that nature. We pursued at great length with Mr. Orenstein, Mr. Rose and Mr. Pierce, particularly Mr. Orenstein, as to the final nature of a sale and that in fact these sales were not consignment sales.

Q I am not asking you whether they were consignment sales or final sales. I am asking you, as a policy of business, if Topper Corporation did take back any goods in 1970?

A It was not a policy of business to take returns.

Q Is there an industry practice with respect to promotional toys, which are very seasonal in nature, that if a customer of a toy manufacturer purchases such promotional toys and finds himself in a position where he is unable to sell those toys, that an allowance or exchange privilege or any other arrangement is then entered into between the customer and the manufacturer?

A To no significant extent, to my knowledge. However, I do believe that in any industry a supplier will always attempt to keep his customer happy and he will make exchanges. But I underscore the word "significant." I did not feel and I still do not feel that anyone in this industry makes a practice of taking toys back.

I cite as an example the strongest company in this industry, Mattel, taking a tremendous loss in 1971, losing well over $50 million on toy operations as opposed to a projection, according to the No. 1 toy analyst in the Street at Burnham, of over an $80 million projected profit at the beginning of the year, or a net swing of $130 million.

Q Your memory of the Burnham article is quite outstanding.

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and myself. We went to the company and asked them why the sale occurred, what it in fact meant, what it consisted of, and likewise we talked with representatives of Arthur Young, who were familiar with the account, as to the exact size of the sale.

BY MR. SHUKOVSKY:

Q Whom did you speak to, Mr. Byrnes, in eliciting the validity of the information contained in Note 3?

A We spoke with Mr. Orenstein --

Q Henry Orenstein?

A Yes, Jack Rose and Mr. Schwartz.

Q Did you ask Mr. Orenstein if the customers of Topper Corporation had any rights with respect to exchanging or returning the merchandise subject to the December sales in the amount of $14 million?

A Yes, we did.

Q Where was this conversation held?

A At Topper Corporation.

Q And what did Mr. Orenstein inform you?

A He informed me that the sales were final and there was absolutely no right to return any of the merchandise.

Q I asked you if there were any rights of exchange or return.

A There are no rights to exchange or return any of the merchandise. The customer has no right whatsoever to do that.

Q Did you ask Mr. Orenstein whether the shipments were to the customers themselves or to a warehouse on which Topper Corporation paid the insurance and paid the warehousing fees?

MR. FRANKHAUSER: Break the question down.

A I will break it down in my answer. I was not aware of the fact that such warehouse, as you have just described, existed until early in 1972. It was my understanding that such sales were in fact shipped directly to the customer at that point of time.

Q Mr. Byrnes, are you familiar with the first sentence appearing in the section captioned "Property"?

A Yes.

Q Please describe the property referred to in the first sentence, which refers to approximately 1.1 million square feet for executive officers, principal manufacturing and warehousing facilities located at Elizabeth, New Jersey.

A You mean a physical description?

Q Yes.

A It is an older building, located at Trumbull.

that conclusion? Is that what you are asking?

MR. DAILEY: Did he have that conclusion or did he reach it during the course of the 1970 audit?

MR. FISKE: Do you understand the question. Did you conclude that one particular line of toys was not marketable?

A No.

Q Did you know during the course of the 1970 audit what the relative success of the Johnnie Lightning toy was?

A Yes.

Q And what was that?

A Well, from reading various trade magazines and from knowing that Topper sold a good deal of them during 1970, the fact that there was still a demand, I think it was the number 2 or 3 best-selling toy during that period.

We knew it was a so-called hot item.

Q Did you know during the 1970 audit to what extent Topper customers had returned Johnnie Lightning toys either for credit, or in exchange for other toys?

A I knew about the exchange program, car exchange program, yes, during the 1970 audit.

Q What do you know about that program?

A ~~That there was a heavy~~--I was told in 1969 that customers sent back for repackaging and resortment cars that went back out again.

I believe it happened in the early part of 1970.

Q The early part of 1970?

A I believe so. Just searching back for a second. It happened sometime in 1970. I remember finding out about it, 1970, during the audit in 1971.

Q Did Topper record the transaction involving the transfer of goods to the New York Terminal Warehouse on behalf of customers in December, 1970 as sales for 1970?

A Yes.

Q In terms of accounting policy in 1971, what events were necessary for Topper to record a transaction as a sale?

A Title passed.

Q Under what circumstances did Topper consider title passing?

MR. FISKE: Do you mean with respect to the sales end of the warehouse?

Q I am speaking now of the general sales policy.

A You mean when does title pass?

Q When did Topper consider title to have passed in 1970?

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sure at that point anybody had any kind of conclusions.

Q Who at Arthur Young made the decision to adopt special review procedures for the merchandise in the New York Terminal Warehouse?

A It would have been the three of us. It was as a result of that meeting on Monday. I think we talked about getting more information, ~~doing~~ during part of the audit. To audit this other, as we would anything else. And I was directed to do whatever was necessary, audit procedures, to find out about it which I did.

Q Was this memorandum, Plaintiffs' Exhibit 966, the catalyst for the decision to adopt special review procedures, or had the decision been made prior to the writing of this memorandum?

A No, there were some decisions made during that week on the phone. When I found out about this, some of these things on the phone, getting some more information about New York Terminal that we talked about perpetual records, things like that. There were other things done prior to this. There were things done after this because they asked me to go to Topper and find out some more information.

Q Referring back to Plaintiffs' Exhibit 965, do you have a copy?

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that was Topper's position. I am asking for the conclusion which they reached.

MR. FISKE: In other words, independent of the representation?

MR. DAILEY: I would think it would include the representations, plus other representations, and market realities--that they would make.

A We came to a -- I cannot isolate it just to Kresge, but we came to different conclusions based on the extended dating program, that is reflective of management's representations we felt a provision ~~on~~ or accrual would have been prudent to make for this program.

Now, management obviously -- not obviously -- but management was very much against our position.

Q Well, we will get to that.

A So we clarify one other thing, when you said based on those discussions did --

Q No, I said did you come to a conclusion, and this would include those discussions plus whatever other independent decisions.

A Including other auditing procedures, right.

Q And your conclusion was?

MR. FISKE: Well, with respect to what now?

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remember going through a lot of discussions on where we can best use our net operating loss ~~cover~~ carry forwards in the future, and the scope would be trying to maximize your Schedule M items.

I don't know what else. That is pretty much my recollection.

Q Do you recall what the outcome of these deliberations were with respect to treating the warehouse sales for tax purposes as opposed to book purposes?

A The discussion I was talking about was on extended dating. It was a total extended dating program, including the accruals, and things which were set up.

As far as the outcome, I don't remember seeing the tax return in 1971, so I assumed they were handled the same way.

Q In calculating reserves for Topper's accounts receivable during the 1970 audit, was a reserve calculated based on the profit attributable to merchandise stored in the New York Terminal Warehouse as of December 31, 1970?

A Could you repeat the question, please?

(Question read.)

A I think Jack Rose used a basis for his calculating his reserve for the extended dating program the application of merchandise in the New York Terminal and

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ted, or, summarized, the profit reserve of the million five.

Q Was the amount reflected at the bottom, the bottom number figure on this schedule, booked as a reserve against accounts receivable in 1970?

A Yes. I don't want to get off --

Q This figure, $1,450,000?

A This was booked as a deduction against accounts receivable.

Q Now, we can come to Mr. Fiske's question of who was responsible for the decision to book this reserve in 1970.

A Arthur Young & Company.

Q Could you explain the circumstances relating to that decision, or summarize them for us?

A After I had had the various audit procedures performed on extended dating and New York Terminal, et cetera, Mr. Botte met with me out at Topper. I think it was February 1st when I reviewed with him the status of the audit and the representations made by Topper and confirmations to date and various other schedules.

We then met with Mr. Rose. We discussed in our meeting with Mr. Rose -- I think Mr. Schwartz was there -- the nature of the spring program, the experience they had in 1969 with Kresge, the fact the program was new, large, et cetera.

Mr. Botte suggested to Jack Rose that a provision should be made in 1970 for various items that could eventually happen, just for conservatism, for 1970 financials, because of this new program.

That was the first meeting on that subject.

We again met about a week later on to go through the whole bit. Mr. Rose objected that any reserve is necessary. He felt that all the sales were final, nothing would happen. He was adequately reserved for in his accruals and rebates allowance. And his debt experience had been minute. And he felt that a reserve provision was not required.

Mr. Botte felt to the contrary. I agreed with Mr. Botte. We left the meeting with Mr. Botte suggesting that Mr. Rose think about it. Subsequently, there was another meeting, I believe it was February 8 or 9. I think again it was held in New York, though not at Topper, where we again discussed it. I am not sure if a conclusion was reached at that point, because I just don't recall.

Mr. Rose again didn't feel a reserve was necessary. A week later, 18th or 19th of February, when we were at Topper summarizing the auditing for Mr. Rose, for Mr. Botte, we were wrapping up the audit, we talked to Mr. Rose, and at that point he agreed to book a provision, suggested an amount, Mr. Botte agreed, the amount was booked.

Q And the amount that was booked, was that indicated on Plaintiffs' Exhibit 97[illegible]?

A Yes.

Q At any time during the meetings which you have just testified on did you, or Mr. Botte, discuss with Mr. Rose the basis upon which he calculated the reserve for this program?

A I knew how he calculated it. I knew how he came up with the amount. Mr. Botte was more concerned with the end result. I don't know whether he got into the calculation or not. But he was looking at it from the standpoint of materiality and how it related to the receivables and extended dating receivables.

And he felt that was an adequate provision. I just don't recall whether Jack ever came in with a set of work papers in showing us the calculation or not.

(Copy of handwritten memorandum was marked Plaintiffs' Exhibit 1031 for identification, as of this date.)

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They wanted to know about the program. We talked about it and I remember Conrad Sterrett asking us a lot of questions about what it was. Asking Rose a lot of questions about it. We -- I remember Joe Hinsey got into a discussion about his opinion letter that he was ~~asking~~ asked to do, I think, an opinion letter on it, and he concluded from a company standpoint these were valid sales.

I think they asked us about our confirmations, and we discussed how much the sales were on that extended nature of the terms, the fact that there was provision set up for those sales, I think, about $2 million.

I referred him back to the footnote 3. That was the first discussion on it at that meeting.

Q You earlier said you thought it was after this meeting with the underwriters that it became clear in your mind that the reserve was against the extended dating program and not the warehouse?

A Yes. The reason for that, Mr. Walsh was at that meeting and he was talking about the reserve, the provision against the extended dating program. When we left that meeting, Mr. Walsh and I met with Botte to fill him in about the meeting and talked about the provision.

And Mr. Botte made it crystal clear to me, and I

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million, and then from $3 million to $2 million?

A I mean not that that was not discussed in a meeting -- well, it was discussed.

It was discussed how you went from $~~15~~16 million to $14 million. I never remember a $15 million number. Someone asked what was the difference, and we indicated they were reserve provisions.

Q Do you recall who asked how you went from $15 million to $14 million in sales?

A It was a discussion on --

MR. FISKE: Do you mean what particular person asked that question?

Q Yes. If you can recall?

A The only way I can remember someone asked. I just cannot tell you who asked for a break-down of the five to eight months that added up to $~~15~~16 million. Someone wanted to know how did you get $14 million. I told them, or management told them. Someone told them.

Q You don't recall who it was? Do you recall it was someone from Hayden Stone or White & Case?

A The only one I remember asking a lot of questions on it. It could be one of those two.

Q Was Mr. Sterrett one of the persons who was asking a lot of questions on it?

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Walsh and I agreed with him. It was a judgmental factor. There was no calculations that had to be X-percent or whatever. It was a judgment.

Q Do you know what factors Mr. Botte, Mr. Walsh, or yourself considered relevant in determining the adequacy of that amount? Did you have any frame of reference?

A I think we had all to--some extent we were trying to get an idea of what experiences there might have been many years ago when they had a program, I think, where their terms of the program were to sell with returns.

Looking at those sales what conceivably could have come back. There ~~was~~ were no guidelines, to my knowledge, that Mr. Botte said it had to be X-percent. I just don't remember any.

Q Did anyone at Arthur Young consider or propose that the reserve be an amount in excess of twenty percent?

A Not that I recall. So we can clarify that, it was a little bit larger than twenty percent. It was really $2 million of the reserves, not a million and a half. He was measuring the net receivable, so to speak, and taking all those other reserves we had in addition to that and looking at the overall income statement and the materiality of the reserves and the balances.

Q You were aware prior to the sign-off date on the

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did it on the basis of the reserves for the two years against the net sales, and I believe the receivables after adding back those reserves.

I remember Walsh, Botte and I sat around and looked at what our exposures were at the same time.

We were looking at our confirmation replies.

Q What affect does the creation of reserves have on the statement of operations?

A Reduces profit.

Q Why was only the reserve for bad debts disclosed in the certified financial statement of Topper year ended December 31, 1970?

A That was the only general reserves. The others were specific discounts, allowances, et cetera, against specific accounts, specific customers.

Q Does this include the approximate $1.5 million reserve against the extended dating program?

A Yes, made up against the extended dating program customers specifically. It was a separate group.

Q The rationale is that the reserve that was attributable to particular customers was not--

A These aren't reserves, so we clarify that. Our whole concept of showing accounts receivable is to show our net collectability of an account.

When you have accruals for specific customers, the only correct way to show it is to show it "net of" the accounts receivable, directly deducting it against it.

Q You include within this the 1.5 million reserve?

A Yes, we did.

Q Even though, at least as of the time of the certification of the financial statements, you had no way of knowing whether 1.5 million would be depleted or not?

A But it was made up against those specific customers.

In other words, the accounts receivable was made up against the customers that made up the 16 million. We knew the group of customers.

Q Was not the bad debt reserve made up also of the group of customers?

A These were made up with particular customers in mind.

Q Did you not add to the bad debt reserve in 1970 because of particular customers?

A Add to it?

Q Yes.

A No. The amount was the same the two years.

In reality, though, the total, the client would not attest.

It was our own judgment of trying to determine the adequacy of the allowance for doubtful accounts.

Q Who at Arthur Young was responsible for the decision to disclose various reserves in the financial statements?

A The client was responsible for it. It was the ~~client~~ client's financial statements.

Q It is not the question I asked. The client makes up financial statements and prepares them the way they want to do it.

A The auditor determines whether they are acceptable or not acceptable.

Q On the question of the disclosure of the reserves, if the client prepares the financial statements and does not disclose a reserve which should be disclosed, would you certify it?

A If it was material, we wouldn't certify it; if it was immaterial, we would. The judgment is the person who signs the financial statements.

Q Mr. Cook, were you aware during the 1970 audit that the SEC Regulation S-X in effect at that time required disclosure in Schedule 12 of all reserves

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have been another one. I just don't recall. In other words, one meeting I specifically talked to Mr. Walsh about it. I don't recall whether we then went into Mr. Botte's office or it was the same meeting or not. It's too far back

Q Sure.

Was the subject of disclosing the $1.5 million reserve either in the financial statements or in the prospectus, discussed at any of the meetings with the underwriters about which you testified on Friday?

A Yes, in the context that we discussed the extended dating program when we brought up the point of disclosure and the S-1 in a ~~company tax~~ context where we discussed trends and it was a discussion of what makes up the amount and how we got from 16 to 14, because somebody--I think it was someone from the underwriters wanted to know how much was due in the eight months and how much was due in five months. When they added up it was sixteen million and they wanted to know how you got the fourteen million. We disclosed the reserves or the provisions against it. It was discussed in that context.

Q I believe you also testified on Friday that Mr. Rose carried the ball, so to speak, on most of the discussions relating to the reserves. Do you recall whether at this meeting, Mr. Rose informed those present as to basis upon which he collated this reserve?

I don't recall that.

Q Do you recall Mr. Rose discussing this reserve, the $1.5 million reserve, against the extended dating program?

A Yes.

Q At the meeting?

A Yes. That ~~plust~~ plus the four hundred thousand, because I think you have to take the two together. It's around $2,000,000.00 you can segregate really.

Q Did Mr. Rose explain these two ~~componenets~~ components of the reserve at this meeting?

A If you bear with me, I am trying to go back for a minute here.

Q Sure.

A I do remember discussing or he discussed that there were provisions for about $2,000,000.00. I just don't remember whether they were broken down or not. I am sorry. I remember that they did talk about discounts. I do remember that. Someone had asked whether a franchise distributor discount was accrued for.

Q Do you recall who asked that question?

A No.

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A I have to go back. I just have to go back to the papers and start to go through it.

Q What is the second item?

A "Reserve for returns, gross provision a million dollars, attempt to prorate, based on above percentage."

Q What was the purpose of that calculation?

A To come down--to try to identify if we could just on some hypothetical basis,--not hypothetical, I tried to do it on a percentage relationship on a portion of the million dollars, how much could conceivably apply to the balance of coverage.

Q What's the last item?

A "Confirmations not included in total since received by client and given to A.Y. See extended dating analysis of a million one".

What that was, we didn't include certain items up above for our basic statistics of one of those was where confirmations were mailed to the client and we didn't accept them unless we received them independtly in our own office.

Q I call your attention to plaintiffs' Exhibit 1044, which is a handwritten schedule entitled "Extended Dating Receivables Stats". What was the purpose of this schedule?

A That was to just show the percentage of confirms on the extended dating program.

Q This schedule indicates, as you testified earlier, that as of the date of schedule, anyway, there were no cash receipts applicable to the extended dating program?

A That's right.

Q Was any consideration given to issuing a subject to opinion with respect to the extended dating receivables in connection with the 1970 audit?

A I never considered it.

Q Do you know whether Mr. Botte or Walsh considered this?

A I don't know.

Q Was a schedule ever prepared summarizing results of confirmation requests apart from the schedules which show confirmation requests plus cash receipts?

A You are talking about 1042?

Q Yes. These three schedules I have showed you aparently analyzes, as you say, the coverage of the receivables and take into account both cash receipts and confirmation requests. Was any schedule prepared analyzing the confirmation responses alone?

A I just don't recall.

* * * *

any individual, specific individual.

Q Yes?

A And in the accounting department, I would want to add it, you have all the accounts receivable department with that and you have the credit department within that. So you have two departments within there.

Q It could come from any of these?

A Yes.

Q What tests were done in early 1971 in connection with the 1970 audit on credits?

A We controlled the credit memos to find out why they were issued, what the documentation was and whether we had provided for those in various accruals.

Q What tests did you run to determine that all credits which had been agreed upon by Topper and its customers were reflected by Topper's records, processed or unprocessed?

A Several. One, through response of the confirmation. Two, through the credit memos. Three, through the inventory cutoff work. We controlled the cutoff books, so we knew what merchandise had been returned which you follow up with credits. Four, we reviewed with the--I think it was the customer service or accounts receivable department--of any unprocessed documentation. Five, we talked to Pierce and Rose about what had to be accrued later on the various documentations they had. It is indicated in the rebate allowance binder and got various representations from Orenstein and Rose--and Swartz--that all provisions ~~and~~ had been accrued for.

Q With respect to the confirmation response, did any of those indicate that customers were claiming credits which were not reflected by Topper's records?

A I think there were some small amounts, yes.

Q Do you recall approximately what these amounts were?

A $16,000 or $20,000.

Q You mentioned three items which you relied upon or included within your tests of the credit memos during the 1970 audit. You said you checked the credit memoranda, the cutoff book and the unprocessed documents?

A Yes.

Q How would any of these reflect a credit which had been granted which had been agreed to by Topper and a customer, but which hadn't been recorded?

A If a credit memo was issued in, let's say, February for a price concession, normally that would come through your credit memo summary in 1971. From an accounting standpoint, though, if it related to 1970, we wanted to make sure it was accrued. So we would trace that back to the documentation making up the various provisions to see whether they had picked it up or not.

Q Okay. Perhaps I wasn't clear. My initial inquiry was directed towards what tests Arthur Young conducted to determine whether Topper's internal documents reflected all the credits which Topper had agreed to give customers, and you said the confirmation response, that certainly would?

A Right.

Q I am not sure how these three items would, because they are the very documents we are talking about.

A Not necessarily. You had your accounting department, would issue the credits. The sales department were the people who had the documentation. It is quite possible your credit department would issue a credit without sales' knowledge of returned goods or what have you. As a test of omission by the sales department and I think there are some memos that indicate it was a test of omission. You would check to see whether the same people had these documents on their records.

Q Before you go on, would that indicate then--all right.

What conclusions, if any, did you draw from the instances where the credit had been issued by the accounts receivable department but there was no supporting document in the credit department files?

A There was only a couple of immaterial items that we were satisfied with.

Q You were aware that there were oral agreements?

A That were accrued for.

Q These could relate to--

A That's right. There ~~was~~ were oral agreements made by the sales department. If there was a credit memo generally issued, you would want to make sure they picked it up. The indication was they did.

Q Did your tests include a review of a portion of the customer's files where such agreements would be reflected?

MR. FISKE: Which files?

Q Which files were reviewed?

A We reviewed all the files in connection with the extended dating program that were in the customer order department. Plus we reviewed the various files relating to D & B and other credits that were in the credit department, which should have had all the documentation applicable to credit memos, etc.

Q Do you recall whether there were any customer trying to come up with Schedule M items to--deferred profits so we could use the net operating losses.

(Pause.)

A In addition, let me go on to say--when you say, final sale. Yet I did raise the point, when you say final sale, of whether title passed and that is when you had a sale in the Orient.

Q Yes.

A That led to an inquiry from Topper to White & Case to get the legal opinion.

Q Yes.

A If that answer is what you were getting at?

Q Yes.

A Okay.

Q Other than the particular incident which you have just described relating to the White & Case opinion on the container program, did Arthur Young during the course of the 1970 audit, inquire of Topper whether the sales which were part of the extended dating program had attached to them any rights of exchange or return?

A Yes.

Q What inquiries were made in this connection?

A I talked to--myself and Mr. Botte I know talked to Mr. Rose about it. That was in connection with the audit work we were doing on extended dating and the New York Terminal. When we discussed setting up a reserve. We talked to Mr. Rose about the necessity of the reserve. He strongly objected because he felt there was not reserve necessary since all sales were final. I also talked to Mr. Pierce about it, in connection with the audit when I was discussing with him the prior year's events and wanted to kno hether we could expect a repeat of that in 1970.

Q What prior year's event were you talking of?

A What we were talking about on Friday were merchandise returned from Kresge.

Q The merchandise that was in the warehouse?

A Yes. We wanted to be sure all sales were final in 1970 and it wouldn't happen. I also talked, in connection with the audit--well, Swartz and Obolsky, in connection with our audit work. I think Mr. Botte--well, I am speculating.

Q Okay.

What was the substance of the conversations you had with the various Topper officers on the finality of the extended dating sales?

A The initial meeting with Mr. Botte and Mr. Rose, I believe, it was the first week in February where we discussed the extended dating program and the fact that Mr.

Botte felt provisions should be made for those in the New York Terminal Warehouse. Mr. Rose objected. We left the meeting then with no conclusion. Mr. Botte asked Mr. Rose to think about it. We got back together again, I believe, the 8th or 9th of February. Mr. Swartz joined us at that point, the same conversation ensued.

Q Do you know why the questions were raised with respect to the finality of the sales in the first instance?

A Yes, because of the 1969 experience and the fact that we were looking at the entire extended dating program since it was new and large.

Q Other than talking with Tooper officers, what steps did Arthur Young take to determine whether the merchandise sold under the extended dating program was final and not subject to any rights of return, exchange or other related rights?

A One, we sent out confirmations to the customers.

Q Which is reflected in the January 6, 1971 letter?

A Right.

Q That letter, I believe you testified this morning that you didn't consider including within that letter any specific question on rights of return or exchange?

A You confirm the balance.

Q Yes.

A This is what the customer owed and if he had any exceptions to that balance, he would have let us know. We would have expected the customer to inform us if there was any differences.

Q Did you ever consider asking the customer the direct question of whether it was subject to any rights of return or exchange?

A No.

Q Did you do anything else to determine whether the sales pursuant to the program were final sales and not subject to any rights?

A We inspected all documentation that we requested in connection with the extended dating program. The container agreements. We tested the purchase orders. We looked at the warehouse agreements.

Q These were the procedures we reviewed on Friday?

A Right.

Q Do you recall any other procedures other than those which you have testified concerning now and which we covered on Friday?

A You started out other than Topper managment, let's say, other than Topper personnel.

Q By management, I mean personnel.

A Okay

Q In connection with the various inquiries you made during 1970 relating to any rights which might attach to the extended dating sales, did you have any discussions with Mr. Pierce on this subject?

A Yes.

Q Could you tell us what was said during the course of these discussions?

A I was talking to him about the extended dating program and the fact that Kresge had returned--trying to get an idea why Kresge returned the merchandise from the prior year and whether the 1970 sales were final or if there were any agreements, concessions or documentation to indicate they were. Mr. Pierce said they were all final sales.

Q Do you recall--and I realize it's been some time but on the other hand, I also know it is a subject which has been raised before. Do you recall specifically in the course of this discussion, the question you put to Mr. Pierce relating to this subject?

A I asked him whether all the sales or any of these sales--well, we started out first talking about the 1969 transaction and I said:

"Were any of the 1970 sales subject to any agreements, concessions, rights, exchanges and returns?"

I am not sure. We were talking all the while and going through the whole gamut. The conclusion was that Mr. Pierce said all the sales were final. None of the sales had any hinges on them. That is the way I read it. I am not sure who said what. We both knew what we were discussing.

Q Did he say the sales were final in response to the specific inquires you just related?

A Yes, all the sales were final sales.

Q Was it at this time you had the discussion you testified about on Friday concerning the previous marketing decisions?

A Yes.

Q And was Mr. Pierce one of the Topper personnel who told you at this meeting that no marketing decisions, as far as Topper was concerned, no similar marketing decisionswould be made in 1971, which were made in 1970?

A That was a separate meeting.

Q That was a separate meeting?

A Yes, he had first told me in 1969 of the marketing decision. I asked him if anything happened like that in 1970, and he said no. There was another discussio

I had in Rose's office and Pierce was at it or coming in, outside of his office, it was one of the discussions we had after February 1st, when Rose was trying to convince us that no reserve was necessary.

Q In connection with your subsequent events review which you performed in March and April, 1971, did you inquire at that time whether during the first three months of 1971 any marketing decisions had been made by Topper to allow customers to return the amount of merchandise which was non-defective? My question is not necessarily limited to the extended dating program, but whether any marketing decisions were made by Topper during the first three months of 1971 to allow customers to return the merchandise?

A I didn't personally, other than reading--knowing that we got a representationletter from management, that updated our previous one.

Q Did the representation letter state that no returns were allowed?

A It said that nothing occurred subsequent to December 31st that would have had an effect on the financial statements and updated the December 31st letter which specified the various items.

Q Yes, I believe we can get it if it would be of any significance. I believe the December 31st letter which you referred to said that sales were not subject to any rights of return. I am trying to distinguish between a unilateral marketing decision on the part of Topper to permit returns?

A I didn't talk to Mr. Walsh about it.

Q That was the focus of your inquiry with respect to the extended dating sales. I believe you said aside from any rights you asked whether they were going to make a similar marketing decision in 1971?

A There was a discussion at an underwriters' meeting--I am going to go back to the same discussion, because it was in February and March where they were discussing the whole program and at that point, they had indicated that all the sales were final. Again, this was either late February or early March. We were at those meetings.

Q Yes. What was said on this subject at those meetings?

A Talking about the extended dating program and questions were asked whether there were any rights of return, etc., and the answer was, no, and also we talked about the provisions and there was questions asked. I think someone asked whether there was any of this merchandise coming back and the answer was no, that they were final sales. That was the same discussion I got into with Mr. Hinsey, talking about his letter.

Q His letter on the container program?

A Right.

Q That letter dealt with the date title would pass on goods shipped from the Orient?

A Right.

Q In connection with this meeting with the underwriters or any other, do you recall any discussion of the subject of actual returns based upon a Topper marketing decision?

A No. I don't recall.

Q At this or any other meeting with the underwriters, do you recall any discussion relating to the fact that customers who took goods or were sold goods and those goods were shipped to New York Terminal Warehouse in 1969 had returned approximately 50% of them?

A I don't recall.

(Document marked as plaintiffs' Exhibit 1061 for identification as of this date.)

(Document marked as plaintiffs' Exhibit 1062 for identification as of this date.)

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rights of return or exchange associated with good merchandise as a matter of Topper policy, is that correct?

A Yes, other than--so I can in my own mind class it--what we would call the balancing of inventory.

Q We will come to that in a moment. Apart from that--

A That's correct. I did not believe there was any, right.

Q During the course of the 1970 audit, I take it from your testimony, an extended dating program came to your attention, is that correct?

A Yes.

Q And in connection with that extended dating program, if I understand your testimony, Arthur Young undertook certain extended audit steps, is that correct?

A Yes.

Q Would you tell us what an extended audit step means?

A This is a procedure that would be developed for an event that occurred other than what would be construed as normal auditing steps, as either indicated in Arthur Young's own auditing manuals or through the auditing standards put out by the American Institute. This would be something additional or extended to develop more facts.

Q In connection with the extended dating program that you became aware of at that time you employed certain extended audit steps to test the program, is that correct?

A Yes.

Q What led you to employ an extended program with respect to the extended dating program?

A The initial reason was that we knew, from the standpoint of the accounts receivable, at year end we would not have direct confirmation of the balances from customers. This was based on our prior experiences that most companies will not sign a confirmation because of their own accounting methods.

We extended our procedures in that area to request customers to confirm the balance in the account through a separate element of a confirmation and we sent along with that copies of the invoices and--

Q I will come in a moment to what you did by way of extending the program.

Do I understand your testimony to be that the reason that an extended audit step was thought desirable was because of the possibility that full confirmations of those receivables might be received with regard to the extended dating program?

A That was one of the reasons. The other one was the materiality of the program.

Q Would you describe what part that had [illegible] play in your decision?

A It was a significant amount of dollars involved from the sales and receivables area. In addition, there were a good deal of the goods being manufactured out of New Jersey and we had to verify that all the proper costs and cut-off procedures were being implemented to be certain that where sales were recognized all the associated costs were recognized.

Q You say that goods were being manufactured outside of New Jersey. Do you know where they were being manufactured?

A In the Orient.

Q Having taken the decision to extend the audit steps in regard to the program, and did you, by the way, learn that this was the spring 1971 program?

A Yes.

Q Having undertaken the decision to extend the audit tests with respect to the spring 1971 program, would you tell us what steps Arthur Young took to test the program?

A Aside from the confirmations we inspected all invoices--let me say, we tested the invoices with customers; we tested the purchase orders and Topper orders that were there; we looked at the test basis, the warehousing agreements; I believe there was a spring program agreement, a container agreement; we requested legal opinion on elements of that program, about the container program; we visited the customs broker to verify certain dates of transactions; we tested bills of lading and other shipping documents.

That is all I can recall right now.

Q Did you inform anybody at Topper of your intention to extend your audit procedures with respect to the spring 1971 program?

A Yes.

Q Who is that?

A Mr. Rose, Mr. Schwartz, Mr. Obolsky, Mr. Vogt, Mr. Maas, Mr. Pierce.

I believe that's it, at this point.

Q Did you, as part of these steps, request documentation from Topper?

A Yes.

Q What did you ask for?

A All agreements, contracts, paperwork associated with these sales.

Q Let me ask you this:

Did Arthur Young request Topper to produce for its inspection all documentation with respect to the spring 1971 program?

A Yes.

Q And were you given documentation with respect to that program?

A Yes.

Q And was that documentation represented to Arthur Young to be all the documentation with respect to the spring 1971 program?

A Yes.

Q By whom was that representation made?

A Rose, Pierce, Obolsky, Schwartz, Maas.

That was it.

Q Did any one of the persons whom you have just identified tell you, personally, that the documents which were produced constituted all the documents there were concerning the spring 1971 program?

A Yes.

Q Who told you that, personally?

A Rose, Pierce, Schwartz, Obolsky.

Q When, in point of time, were you told that by the persons you have identified?

A During the course of the 1970 audit; it would have been in 1971, early part of 1971.

Q Can you fix the month?

A Well, it would have been during January and February.

Q Were you told that this documentation constituted all of the documentation concerning the spring 1971 program on more than one occasion?

A Yes.

Q Were you ever told that it consisted of less than all of the documentation during the course of the 1970 audit?

A No.

Q Physically, how was this material delivered to Arthur Young for its inspection?

A The data was in folders, by customer, in the credit area of Topper, and also there were--it was in two places in their accounts receivable files.

Q Did the files that you have just mentioned include such documents as the spring program agreements, the container agreements, the invoices, orders and such documentation to which you previously alluded?

A In most cases, yes; we did find out that some of the orders were taken on the telephone. So there were no formal customer order forms.

Q Were there warehouse agreements in these files?

A Yes.

Q What did the Arthur Young audit personnel do with these files when they got them, in general terms?

A We inspected them in order to get the nature of the transaction and its content. We compared them to the invoices that were sent out to the customers.

Q What was the point of that?

A That was in order to get an idea of what the customer--what the customer ordered, versus what was sent to him. Also to look at whether there were any unusual terms, versus what document, and versus what got sent out to the customer.

We were interested in pricing, as well.

Q In addition to the inspection of the documents that you mention you also made mention of confirmations being sent?

A Yes.

Q Were confirmations sent to all the customers who had bought merchandise from Topper in connection with the spring 1971 program?

A Yes.

Q Were those what I understand are called in the profession, "Positive Confirms"?

A Yes.

Q What is a positive confirm as distinguished from any other kind of confirm?

A Positive confirm is when it solicits a positive answer from the customers, whether or not he agrees.

A negative confirm is one that you send out and tell him he only need respond if he disagrees.

Q I think you mentioned there was an additional inquiry on the confirmation request that was sent out by Arthur Young, or at the insistence of Arthur Young, in connection with the spring 1971 program, am I correct about that?

A Yes.

Q Would you tell us what that additional inquiry was?

A We had asked the customer to directly respond as to the correctness of the extended dating transaction. We sent him copies of the invoices which added up to the balance owed.

Q When you say "added up to the balance owed," do you mean added up to the balance owed in respect to the spring 1971 program?

A Yes.

Q Was this request for a particular confirmation with regard to the extended dating and the invoices different from the inquiry that was submitted to the customer with regard to other sales?

A Yes.

Q Was it more extensive?

A Yes.

Q What led you to believe that such a further inquiry was desirable?

A We had known from our experiences that most customers, the large ones, were unable to respond because of their own internal accounting records and they do not have copies of invoices. In the past years, prior to 1970, as auditors we were able to satisfy ourself by applying cash as it came in subsequent to the balance sheet date, prior to the time we would sign off. Because there had been extended dating, we knew the cash was not due until after our sign-off date, we had to come up with another auditing procedure which would have enabled us to satisfy ourselves.

Q Was this additional inquiry and the submission of the invoices designed to constitute a basis on which you could alternatively satisfy yourself?

A Yes.

Q Did you, in the course of the extended procedures with respect to the spring 1971 program, undertake to call any customers of Topper directly?

A No.

Q Why not?

A We had no reason to call customers and we felt that--let me say that we had no reason to call customers.

Q It would strike a layman, I suppose, that one way to find out whether a customer agreed with the account receivable attributable on Topper's books to him would be to call him up and find cut if he agreed. Is that not a standard step in the auditing in the accounts receivable?

A No, because auditors don't have the right or don't represent directly the company to the customer. The confirmation, as it goes out, goes out on the customer's letterhead, not the auditor's letterhead, and it wouldn't be a procedure for us to represent that we were the company in doing that.

Adding further to that: if we had received a response that the customer did not agree, he would have told us.

Q I am not sure I understand what you mean by that.

A One of the procedures in sending out a confirm is to solicit from the customer any exceptions, so we would have expected him to respond in writing, versus a phone call.

Q Is the nub of it that such direct and personal calls from auditors to the customers of their clients in connection with the verification of accounts receivable is not in your experience normally done?

A It is not normally done and when it is done, it is done with permission from the client.

Q Was there anything that had come to your attention at the point when you were verifying the accounts receivable of Topper in respect to the extended dating program that caused you to believe that it would have been desirable to procure such permission from Topper?

A No..

Q I understand your testimony to be that as you went into the 1970 audit, your understanding was that no customers had the right to return or exchange merchandise subject to the balancing of inventory consideration, which we will discuss shortly. Does that correctly state your testimony?

A Yes.

Q In the course of the extended audit steps with respect to the spring 1971 program did you learn of anything which indicated to you that customers did have rights of return or exchange?

A No..

Q Did you have conversations with Topper officers with respect to whether or not customers enjoyed rights of return or exchange in connection with the spring 1971 program?

A Yes.

Q With whom did you have such conversation?

A Mr. Rose, Schwartz, Pierce, Obolsky.

Q Was there more than one conversation with respect to that subject?

A Yes.

Q Did they extend over the period in which the 1970 audit was being accomplished?

A Yes.

Q And at any time during the course of any of those conversations did any Topper officer or other personnel indicate to you that any customers of Topper did enjoy an exchange or return privilege?

A No.

Q Do you know whether any such indication was made to anyone else at Arthur Young working on the 1970 audit?

A No.

Q When you say "no," do you mean that you know that no such indication was made or that you have no knowledge one way or the other?

A To my knowledge, no one indicated to Arthur Young that such a customer enjoyed a right to return.

Q Do you recall having had a meeting at Topper on or about January 12, 1971 at which the subject of return rights came up?

A Yes.

Q Who was present on that occasion?

A Mr. Rose, Mr. Schwartz, I believe Mr. Zoll, and at times, Mr. Vogt, I believe, also.

Q In the course of that conversation did the subject of a right of exchange or a right of return come up?

A Yes.

Q Would you tell us what was said with respect to the existence of a right of exchange or a right of return on that occasion?

A That there were none. The question I had was raised in connection with the Kresge transaction occurring at that point in time.

Q Would you tell us what the Kresge transaction was to which you refer?

A It was the fact that Kresge had returned merchandise in 1970 that was purchased in 1969.

Q What question did you ask with respect to that?

A Why the merchandise was returned and was it done via a right of Kresge that they had at the time of the sale.

Q Did someone from Topper respond?

A Yes.

Q Who did?

A Mr. Rose.

Q What did he say?

A That it was a marketing and a business decision. There was no right of return.

Q Did you make any further inquiry as to the possibility of recurrences of that episode?

A Yes.

Q What inquiry did you make?

A I had talked at a meeting and others--

Q I am focusing on this meeting.

A With Mr. Rose asking him if this could not occur again, because they were in a process of selling merchandise to Kresge for 1970 and he said it would not happen again, that it was a marketing and business decision.

Q Did Mr. Rose say to you in the course of that conversation in words or substance that the sales were final?

A Yes.

Q Did he use those words?

A Yes.

Q Did you ask him about Topper's intention to take back goods from customers in respect of sales made in 1970?

A Yes.

Q What did he say about that?

A That they had no intention of taking back any goods other than for some minor balancing.

Q Was that the entire substance of the conversation on that occasion with regard to the subject of rights of return or exchange and the intention of Topper, irrespective of such rights, to permit such return.

A Yes.

Q Did there come a time on or about February 1, 1971 when there was further conversation about that subject?

A Yes.

Q Who was present at that conversation, to the best of your memory?

A Mr. Botte, Mr. Rose, Mr. Schwartz and myself.

Q Did the subject of agreements concerning rights of return or exchange in regard to the spring 1971 program arise during the course of that discussion?

A Yes.

Q How did it come up?

A We were talking about our auditing of the program and Mr. Botte's suggestion that Topper considering setting up a provision for costs associated with that. Mr. Rose disagreed with the provision and argued that there was no reason since all the sales were final.

Q Had Mr. Botte, prior to that occasion, personally talked with Mr. Rose about the question of the finality of sales in 1970, to your knowledge?

A I don't recall.

Q Would it refresh your recollection if I were to ask you whether or not on July 25, 1972 you gave certain testimony before the Securities and Exchange Commission in connection with matters related to this litigation; did you?

A Yes.

Q On that occasion were you asked these questions and did you give these answers, and I am referring to the passage beginning at page 183 and following in that testimony:

Q Line 4 - "You have just described earlier conversations you had with Mr. Rose in which Mr. Rose apparently indicated to you that there were no such transactions, I think, wherein the customer had the right to return merchandise.

A "That's right.

Q "Is that right?

A "Yes.

Q "Why did you ask him again?

A "Because Mr. Botte came out on February 1st to review with me the results of the work, I put together the extended dating sales to date and the history of Kresge and Korvette transactions in the prior year.

He wanted to be assured again with Mr. Botte there, that he was the partner on the account, that what Mr. Rose had told me earlier was again a valid conclusion.

Q "And how did you phrase the question as to exchange privileges?

A "We talked in the context of the fact that the customers had the right to return goods and whether they were all final sales, whether there were any concessions or agreements made that would allow customers to return goods. The discussion was in the context of returns and sales."

Do you recall that testimony?

A Yes.

Q Does that refresh your recollection that one of the purposes of this conversation on February 1st was to allow Mr. Botte to explore personally with Mr. Rose this question?

A Yes.

MR. FISKE: I would just point out, Mr. Craco, your earlier question, I believe, was whether Mr. Botte had had conversations with Mr. Rose on the subject before February 1st. Mr. Cook said he didn't know.

MR. CRACO: He said that he didn't recall.

MR. FISKE: One way or the other. I just want to point out, I don't think there is anything in that testimony that is inconsistent with his answer.

MR. CRACO: -- I was trying to refresh his recollection, and he says it does. I wasn't offering it as a prior inconsistent statement.

Q At that time what, if anything, did Mr. Rose say as to the availability to customers of a right of return or exchange?

A That there were none and all the sales were final. He had no intention of taking back any goods.

Q When you say that he said that they had no intention of taking back any goods, do you refer to an intention on the part of Topper irrespective of whether the customer had a right to insist upon such return?

A Yes.

Q Did Mr. Rose say that in substance in the course of that meeting?

A Yes.

Q Thereafter did you have a meeting on or about February 8, 1971 in which the subject came up again?

A Yes.

Q Who was present at that meeting?

A I believe Mr.Rose, Mr. Schwartz, Mr. Botte, myself, perhaps Mr. Walsh, I don't recall.

Q Was the subject of a reserve discussed at that meeting?

A Yes.

Q Did Mr. Rose have a position with respect to the necessity for a reserve?

A Yes.

Q By the way, the reserve was a reserve for what?

A It was a provision for returns, for other types of allowances issued by Topper applicable to the 1971 spring program.

Q What was Rose's expressed position in that regard?

A He didn't agree. He felt that nothing was required--

Q Nothing by way of reserve?

A No reserve was required because Topper was amply reserved in its other areas and, in fact, there had been no intention or right for the customers to return any goods.

Q Did he indicate in word or substance his view of the availability of a right of return or exchange to the customers under the extended dating program in the course of that conversation?

A He indicated there were none.

Q Did he indicate to you whether on that occasion whether he had spoken to anyone else at Topper concerning he availability of such rights?

A Yes.

Q What did he say in that regard?

A That he had talked to his other people and everyone at Topper agreed that no provision was required for the spring program.

Q Did he indicate in word or substance that as a result of his conversation with his people at Topper he was convinced that there were no such rights of return or exchange available to any customers in respect of the spring 1971 program?

A Yes.

Q During the course of the 1970 audit did you have conversations with Pierce on the subject of whether there were rights of return or exchange available to customers in connection with the spring 1971 program?

A Yes.

Q Did you have more than one such conversation?

A Yes.

Q Can you tell us how many?

A At least two. I just don't recall the number at this point.

Q You're referring to conversations that you, personally, had with Mr. Pierce in which this subject came up, is that correct?

A Yes.

Q Did you ever ask Mr. Pierce, directly, whether there were any agreements, concessions or arrangements with customers related to the 1970 extended dating sales by which and by virtue of which they enjoyed rights of return or exchange?

A Are you referring to, now, at the time of the 1970 audit?

Q Yes.

A Yes.

Q What did he say, if anything?

A There were none.

Q He said that to you?

A To me.

Q On more than one occasion?

A Yes.

Q In light of the fact that Kresge had been the customer that had returned merchandise in connection with a prior year's sales, did you take any steps to determine the position of Kresge with respect to rights of return?

A Yes.

Q What did you do?

A We looked at their files of the 1971 spring program.

Q In connection with examining that file what, if anything, did you learn?

MR. FISKE: Just a minute, Mr. Craco. Are you asking Mr. Cook, personally, what he learned as a result of a review of that file by anybody at Arthur Young?

MR. CRACO: Yes.

Do you understand the question? What did you learn?

THE WITNESS: What did I learn from the work someone else did?

Q First, let me ask you, did you examine the file yourself?

A No.

Q Did you cause someone acting under your supervision and control to examine it?

A Yes.

Q Did the person report to you the results of that examination?

A Yes.

Q What did he report?

A That there was nothing unusual in the file.

Q Was the examination undertaken with a particular view towards ascertaining whether there was any indication of a right of return with respect to Kresge?

A No. The examination was in connection with all the customers in the extended dating program and if there were any terms of sale or other items that were not reflected on the invoices that we used as our basis for testing.

Q In particular, was the assertion of any right of return or the reflection of any of the paperwork of a right of return or exchange one of the terms that you were looking at the files to discover?

A Yes.

Q Your examination of the Kresge folder or the examination undertaken at your direction disclosed no such information, is that correct?

A That's correct.

Q Did you undertake any other steps with respect to Kresge in connection with the possibility that they might return merchandise in respect of 1970 sales as they had with regard to 1969 sales?

A We had sent them out an accounts receivable confirmation in 1970 indicating the terms of sale and what they had purchased. Also talked to the officers at Topper.

Q In the conversations that you previously have described having had with the officers of Topper did you, personally, from time to time mention particularly the Kresge account?

A Yes.

Q Did you inquire of these personnel as to their intention to honor returns if Kresge attempted to make them on account of 1970 sales?

A Yes.

Q What were you told?

A That they would not.

Q Is it fair to say that so far as the audit steps for 1970 revealed with respect to Kresge you were specificially informed by the officers of Topper that they had no return rights, that if they attempted to return, such an attempt would not be honored by Topper and that the file and the confirmation with respect to Kresge did not disclose any right of return; is that a fair summary?

A Yes.

Q At the conclusion of the auditing having taken the steps that you have described, did you have a judgment as to whether or not the customers of Topper enjoyed rights of return or exchange?

A Yes.

Q What was that judgment?

A That they did not.

Q Was that based on the audit steps and the interviews and the representations that you have described to us over the last several minutes?

A Yes.

Q From the time that you concluded the audit steps you have described until the public offering, did any facts come to your attention which changed your view on that subject in any way?

A No.

Q In connection with that public offering, I take it from your prior testimony that you attended certain sessions that had to do with the drafting of the prospectus, is that correct?

A Yes.

Q When the first such drafting session that you attended occurred, were there or were there not then available a set of drafting financial statements prepared for the prospectus by Arthur Young?

A Could you repeat the question, please?

Q I will rephrase the question.

There came a time when you joined in these drafting sessions, did you not?

A Yes.

Q Everybody was looking towards the possibility of including in the prospectus a set of financials, is that right?

A Yes.

Q At the time that you joined these drafting conversations, was there a draft set of financials?

A Yes.

Q And did that draft set of financials include the footnotes?

A Yes.

Q For the record I am going to refer to Exhibit 462 which is the private placement memo which includes as an exhibit to it the prospectus in connection with the public offering. So I need not offer a further separate document.

I show you page 34 of the prospectus as it appears in the exhibit I referred to and draw your attention to Note 3, accounts receivable, and I ask you whether that note was one of the notes that was in the draft that was available at the time that you joined the drafting discussions?

A The note was available. I believe the number might have been different.

Q What number are you referring to?

A I think the fourteen million might have been fifteen million or sixteen million; I'm not sure.

Q Was the text of the note available at that time?

A Yes.

Q Were there discussions with regard to that footnote which took place in the course of the drafting conferences that you attended?

A Yes.

Q In connection with those discussions, did you make any suggestions concerning inclusion in the text of the prospectus of reference to the matters which are the subject of Footnote 3?

A Yes.

Q What did you suggest?

A I suggested that the attorneys responsible for the text section consider whether a cross-reference had to be made in the section following a summary of earnings to Footnote 3, considering the rule on trend.

Q Were you, personally, the one who raised that question, initially?

A Yes.

Q Did there ensue over a period of time certain discussions with regard to that suggestion?

A Yes.

Q Who were present at those discussions, if you recall?

A Mr. Rea, from Willkie Farr; Mr. Hinsey and Mr. Provine, from White & Case; Mr. Rose, Schwartz and Downs, from Topper; Mr. Sterrett and Burns, from CWBL. At times, Mr. Walsh and myself.

I believe that's it.

(The record was read.)

A I would like to add--it was either Mr. Berlind or Mr. Weill. I have to apologize. I don't recall which one. It was one of them.

Q Do you recall whether Mr. Orenstein was present at any of those meetings?

A None that I was.

Q Mr. Obolsky?

A None that I recall.

Q Was Mr. Sterrett present at those meetings?

A Yes.

Q Did the discussions result, to your knowledge, in the inclusion of certain textual material in the prospectus?

A Yes.

Q I show you the last paragraph of page 8 of the prospectus and ask you whether that includes the language to which you refer.

A The second sentence does, yes.

Q In the course of those discussions, were there questions asked by participants in the meeting concerning the terms of the spring 1971 program?

A Yes.

Q And in the course of those conversations, were questions asked with respect to the existence of rights of return or exchange?

A Yes.

Q After you raised the initial question about disclosure and trending and the inclusion in the prospectus, do you have a memory of who it was who pursued the questioning with regard to the terms of the extended dating program?

A Yes, it was Mr. Sterrett.

Q Did Mr. Sterrett, in the course of these meetings, ask questions concerning the terms of the spring 1971 program?

A Yes.

Q Did he ask questions directed to the finality of the sales?

A Yes.

Q What kind of questions did he ask?

A He basically wanted to know what the entire program was about. He wanted to know the amounts. At various times in these meetings he wanted an analysis of the aging, when how much was due in May, versus August. We spent a considerable amount of time reconciling the gross sales versus the net sales. We discussed how much of the goods were coming from the Orient versus to Topper.

We got into discussions with White & Case on that matter, too.

Q Did Sterrett ask any questions with regard to whether there were agreements made with any of the customers of Topper in regard to the spring 1971 program which embodied rights of return or exchange?

A To my knowledge, not in those words.

Q Did he ask questions related to that subject?

A Related to the final sales, yes, because we were at that point comparing that to the disclosure that is on the above page 8, which is the event of when Topper was in the supermarket business.

Q I show you page 8 and ask you if you would indicate the paragraph to which you refer.

A It had to do with a combination of two items. On page 6 under the category "Supermarket Toys" and on page 8, item 3, small one.

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Q In the course of those conversations did Sterrett ask the management of Topper in your presence questions to elicit whether or not the spring 1971 sales were final sales

A Yes.

Q Did he ask about whether there were any arrangements with respect to those sales beyond those that were reflected by their terms?

A Not that I recall.

Q You have referred a couple of times to balancing of inventory. What is that?

A The way I understood it, it happened in two cases of Topper. One would be if you had two customers, A and B, let's say. Customer A had ten Dawns and six Glorias. Customer B had six Dawns and ten Glorias.

Customer A found that his Glorias were not selling and wanted a Dawn, and they would switch. They would switch so they would have a better mix in their inventory.

That would be example one.

Example two would be where they couldn't identify another customer and they would send it to Topper, who would send them back equal number of items of the same nature and send it out to perhaps another customer.

Q How did you acquire this understanding of balancing of inventory?

A Through discussions and also in the work we would do controlling credit memos and our work in the return area, we would observe that.

Q Who told you about it in the course of the discussions you described?

A Well, the first time would be Mr. Rose.

Q Did you have any conversations with Fred Pierce concerning this?

A Yes.

Q With Mr. Orenstein?

A Not on that subject during the 1971 audit--1970 audit.

Q Was your understanding of the balancing of inventory based upon conversations with Pierce and Rose and the audit steps that you have just mentioned?

A Yes.

Q During the course of the 1970 audit did you form a judgment that provision had to be made for balancing of the inventory insofar as it was applicable to 1970 sales?

A No. I'm sorry. Yes. I mixed up the question a little bit. Yes.

Q What provision did you feel had to be made?

A Where they were recorded at Topper they obviously would have been reflected in the return authorization run and those would be automatically picked up in their accrual. But they were not, to my knowledge, ever a significant amount.

Q Apart from what would have been picked up in the ordinary course of the run?

A Right.

Q Did you form a judgment that any special provision had to be made with respect to balancing of inventory?

A Yes.

Q What?

A That no provision had to be made.

Q What was the basis of that judgment?

A It was immaterial.

Q On what basis did you conclude that it was immaterial?

A Throughout all our testing we did not find any occasion that a significant amount of goods were coming back.

Q You mean pursuant to the balancing of inventory program?

A Yes.

Q Was a procedure such as you have just described as balancing of inventory unique to Topper?

A No.

Q Is an exchange of merchandise of the character you described as balancing of inventory something which occurs in other commercial firms?

A I have seen it in other firms, yes.

Q Have you seen it at the retail level, for example?

A. Yes.

Q Have you seen it in connection with other audits?

A Yes.

Q On the basis of your exposure to that kind of transaction, are you able to say whether or not such combinations as you have described in connection with the balancing of inventory are normally regarded as returns of merchandise?

A In a retailer, they are not.

Q Is it your testimony that in the case of Topper, to the extent that Topper was involved in your second example of balancing of inventory in the receipt of certain merchandise, that that receipt of the merchandise pursuant to a balancing of inventory was picked up in the ordinary run of returns?

A To the best of my knowledge.

Q That knowledge is based, as I understand, on the audit steps that you have previously described?

A Yes.

Q Was there an exchange program that came to your attention in the course of any of the audits of Topper with respect to Johnny Lightning?

A Yes.

Q What was that program?

A I understand that in the early part of 1970 they were repackaging Johnny Lightning cars and sending them out again.

Q What is the basis of your understanding?

A Conversations with Mr. Walsh, Mr. Zoll and reviewing some memoranda, work papers.

Q Did your knowledge of that Johnny Lightning exchange program affect your judgment that Topper did not offer exchange or return rights?

A No.

Q What was the basis on which you concluded that it did not affect your judgment?

A In discussion with Mr. Walsh we concluded it was a special situation where it was not a return, it was just a new packaging of a mixture of cars. The customer was getting the same number of cars back. He wasn't getting a credit, so to speak.

Q Did you become aware in the course of your audits of a warehousing program undertaken by Topper?

A Yes.

Q I think you have testified at some length in these proceedings concerning your examination of that warehousing program.

Let me ask you whether you reached any conclusion as a result of the audit steps you have previously described in the course of your testimony as to whether or not goods shipped to the Nycto Warehouse in December of 1970, or were in transit to the Nycto Warehouse from the Orient, were properly reported as sales in 1970.

A Yes.

Q What was your judgment in that regard?

A In accordance with generally accepted accounting procedures they should be recorded as sales.

Q Do you have any option in accordance with your understanding of generally accepted accounting principles to recognize those transactions as sales in any other accounting period in 1970?

A No.

Q What was the basis of that judgment?

A Number one, my understanding of generally accepted accounting principles, and number two, discussions with Mr. Botte and Mr. Walsh.

Q Was also judgment also then formed by the audit steps that you previously described in response to Mr. Dailo questions about the facts underlying those transactions?

A Yes.

Q From the time that the audit was concluded until the time of the 1971 public offering did you learn any facts which in any way changed your view with respect to that

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fusion on how you in fact did get from sixteen million to fourteen million and I wonder if you could give us a very short lesson in how you did get from sixteen million to fourteen million in the course of those discussions, without going back over all the elaborate context of the discussion.

A Gross sales and extended dating program were approximately $15,900,000. There were two provisions against those sales, one $1,500,000, which has the one we have been previously discussing, and a $400,000 provision for franchise distributors' discounts that they were entitled in 1971 for the 1970 sales. You subtract those two, you arrive at $14,000,000.

Q Was there considerable discussion concerning each of those respective adjustments to the $16,000,000 figure during the course of the various meetings in early 1971?

A I wouldn't say considerable. It was discussed what the elements were, that there were adequate provisions being made against the sales.

MR. CRACO: Why don't we take a brief break at this point.

(Whereupon a recess was taken.)

Q Did there come a time, Mr. Cook, when you became aware of the discovery at Topper of certain documents pertaining to rights of exchange or return?

A Yes.

Q When for the first time did you become aware of such documents?

A It was a Friday evening in January of 1972.

Q Where were you?

A At home.

Q Doing what?

A I had a party in my home.

Q What occurred?

A I received a phone call from Jack Rose.

Q What did Rose say to you and you to him in the course of that conversation?

A He told me that he was shocked, he just came upon some correspondence between Topper executives and customers. He said that in connection with answering some requests from the American Stock Exchange through an inquiry, Fred Pierce and Henry Orenstein brought to his attention for the first time some letters to customers. He explained to me how upset he was because he had represented to us as he had believed that there were no agreements, concessions, et cetera to customers.

Q Did he describe the documents with any particularity?

A I think he read one of the letters to me on the phone.

Q Did he indicate to you why he was calling you at that hour and under those circumstances?

A He told me that since he had represented other things to us, he immediately wanted to let us know how we had both been defrauded.

Q When you say that he said that he "had represented other things to you," what do you mean?

A He had told us that there was no agreements or rights of return, et cetera, with customers and he now found out that that was not the case.

Q As a result of that conversation what, if anything, did you do?

A I then immediately called Mr. Walsh at his home to inform him of my conversation with Mr. Rose.

Q Did you do anything else?

A Not at that point. I received a phone call back from, I believe, Mr. Walsh or Mr. Botte, I am not sure, and we had agreed that Mr. Walsh and I would meet in our office at Arthur Young, Saturday morning, which I did.

Q Did you discuss this development at that meeting in Arthur Young on Saturday morning?

A Yes, I did.

Q What was the substance of that discussion?

A We, after discussions with Mr. Botte at his home on the call, had called Mr. Rose and asked him if we could have copies of such letters and Mr. Walsh and I went out to Topper that afternoon to pick up copies of those letters, and I believe Mr. Rose had a covering letter with that, giving those to us.

Q Prior to this call in the night, had there been an announcement on or about December 17th concerning Topper's financial conditions?

A I believe there was.

Q Between that announcement and the occasion of Mr. Rose's call to you on that Friday evening, did you have any conversations with anybody at Topper concerning agreements with respect to exchange or return rights?

A Yes.

Q With whom did you have such conversation?

A Mr. Pierce.

Q Do you recall the date on which you had that conversation?

A I believe it was January 7th.

Q Was anybody else present?

A Mr. Bob Richter.

Q Who is Mr. Richter?

A He was the audit manager from Arthur Young in charge of the 1971-1972 audit.

Q Anybody else present that you recall?

A No.

Q What did you say to Mr. Pierce in respect of agreements with regard to exchange or return rights, and what did Mr. Pierce say to you on that occasion?

A I had asked Mr. Pierce in the context of we were discussing the good deal of inventory accumulating and our need to observe accounting of that inventory, whether any of these returns were being accepted by Topper as the result of any previous agreements, concessions, et cetera, with customers relating to 1970 sales.

Mr. Pierce indicated they were there. It was a result of a current situation, a need for cash, the oversaturation of the market that Topper was doing this.

Q Did you specifically ask Mr. Pierce whether the inventory situation that you described was the result of any prior agreements with customers concerning rights of return or exchange in regard to the 1970 sales?

A Yes.

Q Did he, in response to that inquiry, indicate that there were no agreements of any kind or arrangements of any kind or concessions of any kind with customers relating to the 1970 extended dating sales?

A Yes.

Q I show you Plaintiffs' Exhibit 751 previously marked which is a letter dated January 15, 1972 to Mr. Al Botte bearing a typed signature of "Jack J. Rose" and certain attachments, and I ask you whether this is the covering letter that Mr. Rose gave to you and to Mr. Walsh on the occasion of your Saturday visit to him.

A Yes.

Q Would you look at the balance of that Exhibit and tell me whether the attachments that are affixed to it there were furnished to you at the same time, to the best of your present recollection.

A To the best of my knowledge, yes.

Q How many letters of the kind that Rose described to you on the phone did Rose indicate had been discovered?

A Fourteen.

Q Did he give you copies of all fourteen?

A Yes.

Q Did you have a conversation with Mr. Rose on the occasion of your visit to him on that Saturday?

A No.

Q What next occurred with regard to the discovery of these letters?

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1970 did you request Hayden Stone to confirm certain particular transactions in which they were directly involved?

A I believe we did.

Q Did you receive those confirmations in the ordinary course?

A To the best of my recollection, yes.

Q Did there come to your attention anything inaccurate about those confirmations?

A No.

Q Aside from those confirmations, in the course of auditing the financial statements of Topper for the year 1970 and in forming the judgment to render an opinion on those statements did Arthur Young rely on any representations at all from Hayden Stone or its personnel?

A Not to my knowledge.

Q In the course of the audit of Topper for the year 1970 and in the process of determining to render an opinion on the financial statements of Topper for that year, did Arthur Young, to your knowledge, receive representations of fact from personnel of Topper?

A Yes.

Q In the course of the audit and in the determination to render an opinion on the financials of Topper for that year, did Arthur Young rely on such representations of fact, subject to the audit checks which you have described?

A Yes.

Q Would you identify the officers of Topper from whom you recall such representations having been made?

A Orenstein, Rose, Pierce, Schwartz, Obolsky.

Q Did those representations include representations to Arthur Young that the sales in respect of the spring 1971 program were all final sales?

A Yes.

Q And that there were no agreements, concessions or other rights by way of return or exchange which affected those sales?

A Yes.

Q Did Arthur Young, subject to the audit steps which you have described in your prior testimony and today, rely upon those representations?

A Yes.

Q Were those representations given in writing?

A By some of the individuals, yes.

Q I show you Plaintiffs' Exhibit 797 which is a letter dated February 23, 1971 to Arthur Young and Company, signed by Henry Orenstein and Jack Rose. (Handing)

I ask you if you recognize that document.

A Yes.

Q What is it?

A That is a representation letter from Topper officers to Arthur Young & Company.

Q Who prepared the language of that exhibit?

A Arthur Young & Company.

Q Was that language prepared after consultation with the officers who were called upon to sign the document?

A No.

Q Was it prepared after conversations with any of the officers who signed the document?

MR. FISKE: You mean conversations about the language of the letter?

MR. CRACO: No, about the matters which the letter covers.

A I'm sorry. I didn't understand your question. Let me go back for a minute.

Q Let me reframe the question.

A Okay.

Q Were the matters which were the subject of the representation letter Exhibit 797 discussed in detail in advance with the officers who were later called upon to sign the language prepared by Arthur Young?

A Yes.

Q Was the language drafted by Arthur Young on the basis of those conversations and its other audit steps?

A Yes.

Q Is Exhibit 797 a written representation of the character to which you referred a moment ago?

A Yes.

Q In addition to that written representation were there oral representations made from time to time concerning matters of fact, including the matters of fact as to the sales, returns and exchanges to which you previously alluded?

A Yes.

Q Were those representations made from time to time to you during the course of the audit by Mr. Orenstein?

A I remember one particular meeting, yes.

Q By Mr. Rose?

A Yes.

Q By anybody else?

A Yes.

Q Who?

A Pierce, ' nwartz, Obolsky.

Q Have you, in the course of the testimony that you have given in this proceeding, including your prior sessions of this deposition, fairly and accurately described the conversations in which those representations were made to you?

A Yes.

Q [illegible] in between the regular quarterly meetings of the board of directors?

A Correct.

Q Were there special meetings called for the purposes of presenting of the projections and estimated sales and earnings?

A No, not to my recollection.

Q With respect to the advertising expense, do you recall whether this item was particularly questioned at any time by the banks?

A Well, when you say questioned, it was discussed.

BY MR. SHUKOVSKY:

Q Was it ever so high as to elicit a response from the bank which questioned the amount being spent or in which any discussions were conducted as to the amount?

A Well, the bank came into this picture knowing -- or the banks came into this picture knowing that it was a promotional toy company and that it historically spent approximately 11 percent of the sales dollar on advertising, and that was a matter of discussion. But what you say did we -- I get confused with the "we" and the "they" -- was it criticized? The banks did not presume to tell the company how to run its business.

The banks [illegible] looked at the company's plan,

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[illegible]

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Q. That would be before the regular quarterly meetings of the board of directors?

A. Correct.

Q. Were there special meetings called for the purposes of presenting these projections and estimated sales and earnings?

A. No, not to my recollection.

Q. With respect to the advertising expense, do you recall whether this item was particularly questioned at any time by the banks?

A. Well, when you say questioned, it was discussed.

BY MR. SHUKOVSKY:

Q. Was it ever so high as to elicit a response from the bank which questioned the amount being spent or in which any discussions were conducted as to the amount?

A. Well, the bank came into this picture knowing -- or the banks came into this picture knowing that it was a promotional toy company and that it historically spent approximately 15 percent of its sales dollar on advertising, and that was a matter of discussion. But when you say did we -- I get confused with the "we" and the "they" -- was it questioned? The banks did not presume to tell the company how to run its business.

The bank either looked at the company's plan, A He commented that the toy industry was--the terminology was worse than the garment industry.

Q When he said this to you, did you have an understanding of what he meant by worse than?

A Well, I didn't know his position and title. I knew he was involved in product development.

I took his statement to mean that there was a little protection that you could give to new products and there was great secrecy attached to it and it was very competitive.

Q Did you ask him any further questions with regard to his reference to the garment industry?

A No, I didn't.

Q What was this gentleman's name, do you recall?

A George Payne.

Q Other than what you have just testified to, do you recall anything else that you asked him?

A No, I don't.

Q Or anything else that he said?

A No.

Q We've established that prior to your meeting on August 13th, you read the offering memorandum; is that correct?

A Yes.

* * * *

A No. * * * *

Q Going back to this meeting, again, you talked about financial controls, I believe.

A Yes.

Q You talked about the Suzy Homemaker line and the growth and condition of the entire toy industry..

Do you recall any other topics that were discussed at the meeting?

A We discussed the fact that they relied on a manufacturer in Hong Kong and I think another agent location, so that they could change the size of manufacturing orders quickly.

So it was less expensive than ~~producting~~ producing SP at the Elizabeth plant.

Q Do you recall any other topic that was discussed?

A We discussed a little bit about the background of Mr. Rose.

Some comment on the fact that he had been with Lionel prior to coming to topper; we talked about Lionel briefly.

Q Was Sesame Street discussed?

A Yes, Sesame Street was discussed.

We discussed the nature of the contract with the workshop and their expectations for the success of the line which was to be introduced in the fall, marketed actually, delivered to retail stores, presumably ordered and marketed in the winter of 1971.

Q What was said about the contract, do you recall?

A My understanding was that he had--that they had an exclusive, and they were going to absorb the developing and manufacturing costs and pay a royalty to Children's Workshop on the basis of actual sales that enabled them to get the advertising exposure at zero cost, basically.

Q Was Dawn discussed?

A Yes, Dawn was discussed because it was a major component of sales.

Q Do you recall anything specific that was said about Dawn?

A Dawn was regarded as an on-going line in which they were expanding the number.

A number of fashion accessories and styles--

Q Was anything said about the amount of sales that had taken place on Dawn in 1971?

A No specific numbers were cited that I recall, no.

Q Was there any other topic that we haven't covered that you recall from that meeting?

A We discussed the salesmen's role in being certain that the product line had good shelf display, that the salesmen knew that the items were moving off the retail shelves.

Q Do you recall what was said about how they knew the items were moving off the retail shelves?

A This was, as I understood, a mixed responsibility.

The individual salesman calling on a retail outlet, I don't recall how they monitored this, but it was stressed by both Downs and Rose that they kept very close track of actual retail movement.

I know they specified that the salesmen were required to take Polaroid pictures and bring these back into the sales supervisors. How these were tracked, I don't recall.

Q You mean how they--

A How they utilized this.

Q Do you recall if it was brought up as to whether any written document resulted from this supposed monitoring of retail sales?

A I don't recall in what form the salesman was to report to his supervisor, no.

Q Did you ask if Topper had any records that would show what sales had been at retail for any given time or at any ~~give~~ given JT store?

A I didn't ask that question.

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A Yes.

Q I ask if that sentence accurately states your impression of the meeting?

A It's an accurate impression of my reaction at that time, yes.

Q I call your attention to the third sentence in that paragraph, which reads, "One of our problems in apprising the situation is that the trade contacts with whom I spoke still view the company as it was several years ago, when it was in a poor financial condition and was dominated by Henry Orenstein, the president."

My question to you is whether you had any understanding when you read this memorandum of Mr. Thompson's, basis or bases for asserting that the trade was wrong or not current in evaluating Topper?

A The trade couldn't have seen, other than the published annual 1970 report, or the stock prospectus, the same detail that we had seen.

Q Are you referring to defendant Citibank Exhibit 1?

A Which is, this one (indicating).

Q That's right.

A That's right. They wouldn't have any access to that. Presumably they wouldn't have had access to the kinds of conversations that we had with either Downs or

Rose. They wouldn't have had access to Glover Johnson.

Q Did you discuss with Mr. Thompson his check with the retail trade?

A I don't recall the specifics of it, but I'm sure I did talk with him about who he had talked with and what their reactions were.

Q When you say you don't recall the specifics, is that you don't recall anything they said to him?

A I know he talked to the people at Zayre and to one or more of the contacts where we had an investment link and had reason to believe that we would get a response.

Q Do you recall any of the details of what the trade told him?

A No, I don't.

Q I call your attention to page 2 of the memorandum.

MR. BICKS: Pardon me, Mr. Griffin, if this is purposeful, fine.

Let me just call your attention that you didn't ask him what was the substance of what was told him as distinct from the details. You may not be interested in that.

MR. GRIFFIN: You're right. I meant substance.

MR. BICKS: Do you recall anything about

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Q Yes.

A That was certainly true.

Q Up until the end of that sentence, following discussion and tentative approval by the vice president-investments?

A Yes. I was one of the two vice presidents of investment. I want to point out that this says by the vice president of investments. At the time there is only--were--

Q There were two at that time?

A That's right.

Q Was there any action taken by you prior to September 28, 1971, that in your opinion constituted your tentative approval of the investment in Topper.

A The memorandum that I left for Mr.Mole could be interpreted that way, yes.

Q Is that what you intended it to be?

A I intended to convey to Mr. Mole that based on the knowledge I had at that point that I thought it was an appropriate investment, yes.

Q Subsequent to sending that memorandum, you had no further discussions with Mr. Mole prior to September 28, 1971?

A I had no discussion with Mr. Mole at any time

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and looked over the hardware. Upon looking over the hardware we all went back and sat down in Mr. Rose's office. I don't recall precisely what was discussed then, but we did discuss the controls, the computer programs that had been developed, the accounts receivable, how sales were booked, and in the course of the conversation, a few examples.

They brought in a run of a computer print out that had a list of customers and the orders that the company had received thus far this year, and we went over the page and checked out a few customers. Finally down at the end was a figure of $53 million in orders that had been received by the company and I asked Mr. Rose if these orders were firm and he indicated to me that Mr. Orenstein thought they were good orders and based upon his knowledge of how the ordering pattern goes, he had never been wrong this far into the season. We then went on to discuss the booking of sales.

MR. BUTLER: Could you go back and read the answer starting with after $53 million.

(Answer read.)

A Jack Rose indicated that once the product was shipped it was immediately booked as a sale and knowing of the prior existence of the bill and hold arrangements that the company had, I asked Mr. Rose were these firm sales and he said yes and he gave me an example as to how the sales were firm by saying that if the company should go out of business tomorrow, the company would legally be able to collect all the receivables. He said, "Though as a matter of policy to keep good will, we do have an exchange or adjustment policy where we do accept some material back," he said, "but in no case would this amount to more than 5 to 7 per cent of the total sales made during the year.

Then I asked another question about the receivables that were on the company's balance sheet. These receivables being the sales that were made back in 1970 under extended payment terms, $1½ million.

I asked Mr. Rose since it had been almost eight months since the time in which the sales were made back in September, weren't those receivables all collected. And Mr. Rose at that point asked to have the question repeated and Jay Inglin at that point repeated the question to Mr. Rose. Mr. Rose said, "Yes, that sales or that the receivables were virtually all collected and no delinquencies were being experienced."

We then went on to discuss how the company knew merchandise was moving off the shelves and Mr. Rose indicated that he had an internal audit team that went out and made periodic checks on the customers to insure that

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MR. BAILEY: What do you mean by late in '71, July, August or November, December?

Q I would say from October on?

A To the best of my knowledge, I don't really know.

Q Let's go back to the glut, you say the glut was on the retail level, do you know there was a glut of Dawn dolls in the retail stores?

MR. BAILEY: I believe the witness testified he heard from others one reason for the failure in the market was the glut. Did you have personal knowledge?

THE WITNESS: No, I didn't.

Q You mention they did not have enough money for a television advertising program; would you explain that a little more?

A If one can assume that '71 was a unique year, sales were had in that particular year, that particular product, the company had been using advertising as a means to distribute its products, that the following year if the availability of credit was there to continue on that particular line of marketing program --

Q, I think the thrust of your answer is that in '72 Topper would not have sufficient funds to advertise if the product was not successful in '71, is that correct?

MR. DAILEY: I think his answer speaks for itself. Why don't you ask him any particular ambiguity you have with his response.

Q I am discussing '71. Did you say before that there was not sufficient funds to advertise on TV in 1971?

A No, I meant that the product in my estimation, the product's saleability became hampered as a result of the glut in '71 and then because of the unavailability of money in '72, Dawn no longer was generating the sales that it could have.

Q You also mentioned that Topper did not have sufficient capital to withstand the bad reception by the purchasing public of a product line, is that correct?

A Did not have sufficient capital to?

Q Withstand a bad reception of the Dawn line that resulted as the terrible losses it had to accept in the end of '71, beginning 1972, you stated that '71 was a unique year?

A I said if it was.

Q Was '71 a unique year?

A It was a disaster for Topper.

Q Was it a disaster for any other toy company?

MR. DAILEY: What you are aware of.

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A I believe to the extent I am aware of, that Mattel had a year in which they had quite a few problems too.

Q Do you have any file on Mattel?

A None in the bond division, no. I say that because there might be one in the company resulting from the common stock carrier.

Q Did you read of the substantial losses sustained by Mattel in '71?

A Not precisely '72, their problems began, if it was '71 or not.

Q But, you read about their substantial losses?

A In recent years, yes.

Q We are early in '74 now.

A That is three years.

Q If you read about it in '71 they had to occur prior to that, is that correct?

A Yes.

Q Were you aware in 1971 of a consumer reaction to the TV toys?

A No, I wasn't.

Q Did you subsequently become aware of a consumer reaction to TV toys?

A After the end of 1971, yes.

Q What did you learn in that regard?

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A I doubt if the Sesame line was even being marketed at that particular time.

Q How about Zoomer Boomer?

A I cannot recall at the present time.

Q Did you discuss the status of the toy market for 1971?

A Mr. Rosenblatt did comment that the toy market in 1971 was not good.

Q Did you make any further investigation regarding that observation, that the toy market for 1971 was not good?

A Not to my present recollection.

Q If you made such an inquiry would you have made a record of it?

A Depends on what might have resulted from it, I imagine.

Q Did you make any record of any such inquiry?

A I don't presently recall making such an inquiry.

Q Did you have any discussion with Mr. Rosenblatt relative to the high price portion of the Topper line and its reception by consumers?

A I thought that in general the Topper line of toys was priced under $10, each individual toy under $10, and that Topper wasn't trying to put toys in the high price and

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unsecured after the Christmas season.

Again, I had some concern here as to the long term nature of our obligation and the shortness of which the banks were in here on a demand and also secured basis.

Mr. Inglis responded by saying that the banks had been with Topper management through some very troubled times before and they had faith in the management team and had been very willing to renew the credit year after year.

In further pursuing this line of talk as to the normal course of subordinated lenders coming in and adding strength to the balance sheet, having the banks go on an unsecured basis, Mr. Inglis then replied that Henry Thompson of U. S. Steel Pension Fund had indeed checked with the head bank, National City and had thoroughly satisfied himself that a favorable check had been made with management and as far as the current financial condition of the company.

In the course of these telephone conversations, Jay had asked Connecticut Mutual what might be our interest in the private placement. I had indicated to him that it could be in the area of $1 to $2 million.

Towards the middle of the week, in another conversation with Mr. Inglis, he indicated that the conversion price had been fixed at $15 per share and that the people at U. S. Steel, particularly Harvey Mullay, had

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report to Dr. Weir?

A On September first.

Q In this report, you have an indication that American National Life Insurance Company was to be a participant to the extent of a million dollars, is that correct?

A Yes.

Q And you have the Princeton University Endowment Fund as a participant to the extent of a million dollars?

A Yes.

Q Did American National Life Insurance Company participate?

A No.

Q When were you informed they were not going to participate?

A In the week following the September 3d week.

MR. DAILEY: That would be the week beginning September 7.

THE WITNESS: Right.

Q Who informed you that American National Life was not going to participate?

A Mr. Inglis.

Q Did you ask Mr. Inglis why American National was not going to participate?

A Yes, I did.

Q What did he tell you?

A He said that somebody at the company had apparently overstepped their bounds when they committed the company with the circle. Upon the particular notes being discussed at higher levels, this particular person was overruled and American National subsequently dropped out.

Q Did you ask him why he was overruled?

A No, I did not.

Q Did you call American National Life Insurance Company and ask them why they were not participating?

A No, I did not.

Q How about Princeton University Endowment Fund, you stated that they didn't participate, who told you that?

A Mr. Inglis.

Q Did you ask him why Princeton University Endowment Fund wasn't going to participate?

A Yes, I did.

Q What did he tell you there?

A He said that Mr. Mullay had been very enthusiastic about the prospects of this particular placement, that he had taken upon himself as being a member of the advisory board to the Fund to go ahead and circle a million, there was some misunderstanding on the part of the person who was actually running the Fund as to their desirability of taking a piece of the Topper notes and subsequently the thing had to be dropped.

Q Is the Princeton University Endowment Fund a prestigious fund?

A I do not have personal knowledge to evaluate the prestige of it.

Q Have you heard that it is a prestigious fund?

A I have not.

Q Did you call Mr. Mullay and ask him why the Princeton University Endowment Fund was not going to participate?

A No, I didn't.

Q Did you call the Princeton Fund and ask them why they were not going to participate?

A No, I didn't.

Q You say you had presented this to Mr. Weir, and in turn he presented it to whom?

A Mr. Bates, who is President of Connecticut Mutual.

Q And is there a committee which determines, makes the final determination about making an investment?

A Yes, there is.

Q And was this proposed investment presented to

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A The sales would be substantially greater in the latter part of the calendar year.

Q What do you mean by the "latter part of the calendar year"?

A The last six months, contrasted with the first six months.

Q Did you understand that there was any trend of sales normal to the industry within the last six months?

A I didn't have that type of familiarity with the industry in the way I think you pose the question.

Q I am trying to find out whether you did.

Did you from time to time gain knowledge concerning sales practices prevalent in the industry?

A Again, you are using a term, "prevalent." It had been suggested that there was a pattern of giving payment accommodations to induce early purchases.

Q What do you mean by "payment accommodations"?

A That the customer would not be required to make payment until a point in time into the year.

Q And that, I take it, was the suggestion that was made to you by someone connected with the toy industry?

A The client would be the source of that information.

Q In the course of your representation beginning in

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detail.

Were you aware of the fact that certain of the transactions in which Topper engaged resulted in the storage at the New York Terminal Warehouse of goods?

A I really could not at this point say whether I was aware of that or not.

Q Were you aware of a so-called extended dating program?

A Yes, there was such a program described in the 1971 prospectus.

Q You were aware of it?

A Yes.

Q Were you aware of a practice by which certain receivables were redated?

A Again, I need you to be a little more specific; but generally, no.

Q Well, to be more specific, were you aware of any practice whereby receivables due on a certain date were redated after they had been issued, so as to come due on some later date?

A I would almost go so far as to characterize it as nothing more than a very superficial awareness. But in connection with the Toy Show in New York, there would be, as I understood it, a combining of matters in dispute, open items, what-have-you, with a ~~determination~~ solicitation of new purchase orders for the coming season.

And in the context of that type of trading, it may well be that there was redating or a fresh invoicing or what-have-you.

This, of course, would have been in the early part of the year.

Q Did you continue during this period to be on the mailing list of the Topper Corporation with respect to financial information?

A Presumably. I don't recall that practice terminating.

Q Did there come a time during this period when certain financial statements as at July 31, 1971, came to you in the course of a mailing to the persons on the mailing list?

A Presumably.

Q Is it your best recollection that they did?

A Again, the pattern was for me to receive them.

Q And if they had, in fact, been sent to the mailing list during that period of time, you would have received them in the ordinary course of the practice; is that correct?

A That's correct.

Q Did there during this period of time come to your attention any practice at Topper by virtue of which goods sold at Topper to customers were subject to a right of return by the customers to Topper?

A No.

Q Did there come to your attention during this period of time any practice by virtue of which goods sold by Topper to customers were the subject of exchanges for other merchandise?

A No.

Q And when I say did such matters come to your attention during that time, I mean during that time or prior to that time, so that you knew of them at that time.

Did you understand my question to be that?

A I reaffirm my negative responses.

Q Now I would like you to cast your mind back to 1966, and to the activities which you testified White & Case had undertaken in respect of certain financing arrangements at that time.

Did White & Case have any role in connection with the preparation of the financing agreements in which those arrangements were embodied?

A The initial draft of the document was prepared by counsel for First National City Bank. It was submitted to

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fall of 1970.

In connection with obtaining those orders, in the case of a number of the customers, where a buyer would have an open to buy, which was a discrete dollar number available for total commitment, the buyer would be unwilling to commit open to buy dollars for merchandise if there was doubt as to whether or not the merchandise would be made available, on the basis that the buyer contemplated in placing the order.

So by putting this merchandise in the sealed containers, in the normal course this provided the degree of assurance that management felt was necessary in a number of instances in obtaining the orders for the merchandise.

Q When did Mr. Rose tell you all this?

A I believe in December of 1970.

Q On the occasion of his initial conversation with you?

A That is correct.

Q In the course of any discussions that you might have had with Mr. Rose on this subject, did you ever inquire of him as to whether the sales accomplished under the spring 1971 program were final?

A No, there was never any discussion with Mr. Rose as to whether they were final.

* * * *

A During what period of time?

Q I am talking about from early December of 1970 through the time that you rendered your opinion on this subject.

A No, no such recollection.

Q Did there ever come a time when you learned of such a purported right?

A In early 1972, as I recall, there were uncovered a number of letters that indicated that certain customers had certain rights, of which we were unaware and Arthur Young was unaware.

When it first occurred, Jack Rose indicated he was unaware of these.

And whether those related to the spring merchandise items or subsequent items, I don't know. I had no understanding or recollection.

Q When you say you were unaware of the right purportedly reflected by that letter, do you mean unaware of those purported rights, right up to the time you learned of the discovery of the letter?

A That's correct.

Q When you say Arthur Young was unaware, do you mean the same thing?

A That is my understanding.

Q What is your understanding based on?

A Telephone conversation Friday night, I believe with Jack Rose; if not Jack Rose, John Provine, in January of 1972. In response to a request of the officials of the American Stock Exchange, these letters were uncovered.

Q Now, apart from that discovery, did you have any other awareness of any purported rights to exchange merchandise purchased by customers of Topper under the spring 1971 program?

A No, I had no such recollection.

Q At no time?

A That's correct.

Q Did it come to your attention whether any of the merchandise purchased on the spring 1971 program by customers of Topper was to be stored at the New York Terminal Warehouse?

THE WITNESS: Could you repeat that question?

(Whereupon, the reporter read back the previous question.)

MR. BICKS: This question, like the one before, I assume is limited in point of time prior to September 1971, is it, or did you not limit it?

MR. CRACO: I meant at any time.

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1971 program had been stored at the New York Terminal Company Warehouse?

A I have no recollection of such an arrangement.

Q Had you been aware that there had been a spring program in 1970?

A No, I had no such awareness; and in fact, I am not sure that there was a spring program in 1970.

I believe there were some sales made at the end of 1969; I believe in the prospectus we set forth a comparison--

Q Of what prospectus?

A (continuing)-- to indicate--April 1971 prospectus.

Q In connection with the registration statement submitted to the SEC in 1970, did you perform any services with regard to the letter of comment received from the SEC?

A Yes, I am sure that I did.

Q I show you Plaintiffs' Exhibit 46 for identification to the Securities & Exchange Commission on Topper letterhead, and I ask you whether this is a response to the staff letter of comment dated May 13, 1970? The exhibit itself bears the date of May 21st.

Can you identify the document, Mr. Hinsey?

A Yes. It would appear to be a letter of supplemental comments furnished to the staff of the Securities &

Exchange Commission.

Q Did you have anything to do with the preparation of that letter?

A I have no recollection that I did or did not.

Q Were you performing legal services in connection with the registration statement to which that letter refers?

A Yes, I was.

Q Now, drawing your attention to the second page of the letter and comment number four, particularly with reference to the language that follows tabular presentation of certain figures, do you notice a reference in it saying in part, "included in the period December 1969 through March 1970 is approximately $3,200,000.00 representing a spring 1970 promotion with May 1970 payment terms."

Do you see that?

A Yes, I do.

Q Does that refresh your recollection that as early as 1970, you were aware of the existence of a spring 1970 program?

A No, it does not.

Q Is it your testimony that you were not aware of it?

A I have no recollection of there being the type of program in December 1969 that was comparable to the program in the latter part of 1970.

Q Irrespective of comparability--

A You are using terminology here of spring program, which is a very loose one.

Q I was borrowing the term you said you felt more comfortable with.

Do you recall a spring promotion in 1970, whether or not it was one having terms substantially similar to that which you became exposed to in 1971?

A No, sir; I don't. I don't recall a spring promotion.

Q Do you recall any extended dating provision in respect of sales generated as a result of a promotional program related to the spring of 1970 in any way?

A No. No, I don't.

Q Do you recall any discussion at any meetings at which you were present of whether those receivables were, in fact, paid as they came due?

A Which receivables?

Q Receivables generated in connection with sales relating to the spring of 1970.

MR. BICKS: The program he testified three times he hadn't heard of?

MR. CRACO: That is perfectly correct.

Q I presume from that, with Mr. Bicks' help, that you didn't hear of what became of any receivables that might have been generated by such a program; is that correct?

A That's correct.

Q And that includes conversations at board meetings, doesn't it?

A Yes.

MR. CRACO: Will you mark this Hinsey 4 for identification, please?

(Diary sheet of Mr. Hinsey for 12/3/70 marked Defendant Hayden Stone (Hinsey) Exhibit 4 for identification as of this date.)

Q I show you Hinsey Exhibit 4 for identification, which appears to be your diary for 12/3/70, in respect to Topper Corporation generally. And I ask you if that assists you in fixing the date on which you had your initial conversation with Mr. Rose on the subject that you have previously told us about?

A Yes, it does.

Q And was that on December 3rd?

A Yes, it was.

Q And thereafter, having received that assignment from Mr. Rose, did you cause associates of the firm to subject. * * * *

A I have no present recollection.

Q Is there anything that could refresh your recollection on that point?

A If there is something in this set of diaries that would indicate it, I am sure that would be helpful.

Q I take it that the diary of March 8th is such an indication to you, is it not?

A I have no recollection of that discussion.

Q And you have no recollection of what was said in the course of it?

A I don't.

Q Did Mr. Rose have a point of view on the subject of the December 1970 sales, in connection with the spring 1971 program, which he expressed to you?

MR. BICKS: This is at any time?

MR. CRACO: Yes.

A Could you repeat the question, please?

(Whereupon, the reporter read back the previous question.)

MR. CRACO: At any time during the course of the preparation of the 1971 public offering documentation.

A Yes, he did.

Q What was that point of view?

A He was not as concerned, at least initially, as I was, with the problem of comparability; the fact that, if memory serves me, there was 16 million dollars of sales in December or in the latter part of 1970, as contrasted with what turned out to be, again if memory serves me, two million the prior year.

So that a prospective investor, without appropria focus disclosure on that point, might be misled by comparin the company's performance between the two years.

And it was my view that this should be a matter of focused attention in the prospectus.

Q And you expressed that point of view to Mr. Rose; is that correct?

A Yes, I did.

Q And what did Mr. Rose respond?

A Mr. Rose felt that since this was going to be an ongoing program, and was generally very enthusiastic about it at the time, that it was unnecessary to devote the focused attention to it that I was recommending.

Q During the same interval of time, that is, during the preparation of the public offering documents for 1971, did Mr. Botte or any other representative of Arthur Young express a point of view on the same subject? That is, the December 1970 sales in connection with the spring 1971 program.

A I have no present recollection of special views.

Q Do you have a recollection of any view being expressed by Arthur Young during the course of that time on that subject?

A They were asked to respond and did, to a rather detailed inquiry directed to the general subject by representatives of CBWL-Hayden Stone.

Q And apart from that, did they have any conversations with you on the subject?

A No, none that I can recall.

Q In the course of your conversations with Rose on this subject, was there any attention paid to the issue of whether or not the December 1970 sales were properly recorded as sales in December of 1970?

A We discussed at the last opportunity that we had to gather the requests for an opinion dealing with the question of passage of title, which is, of course, was a subject of discussion with Mr. Rose.

Q When you say the last opportunity we had to talk together, you mean you and I in this deposition--

A Of course.

Q (continuing)-- rather than you and Mr. Rose.

Q Apart from that opinion question, was there any discussion with Mr. Rose during the period when the treatment of the December 1970 sales in the 1971 public offering documents was under discussion with him, relating to the question of whether they should be recorded as sales at all in December of 1970?

A Again, there was a detailed inquiry addressed to the subject, initiated and pursued by representatives of CBWL-Hayden Stone.

Q And apart from that, did you have any conversations with Mr. Rose on that question?

A None that I can recall.

Q Did you have any conversations with Mr. Rose as to what response should be made to the inquiries made by CBWL-Hayden Stone?

A I did not, because it was in the course of a gathering such as this, and the matter was discussed in the format of questions and answers.

Q In a general meeting?

A That is correct.

Q My question relates to whether or not you had any private consultation with Mr. Rose on that question.

A None that I can recall.

Q With anybody else from Topper?

A No.

Q Now, having discussed this subject between you and me for a few minutes, do you have any recall as to what you were talking with Mr. Rose and Mr. Botte about on March 9th, with relationship to the matter disclosed by the diary of that date?

A No, I don't.

Q Just to follow up on that point for a moment, did there come a time when Mr. Rose's point of view or your point of view on the focused disclosure of these sales derived from comparability changed?

THE WITNESS: Would you read the question, please?

(Whereupon, the reporter read back the previous question.)

MR. BICKS: I would object to the form of that. Would you separate it out, as between Mr. Rose and Mr. Hinsey?

Q You have described what your point of view was on focused disclosure with respect to the December 1970 sales, and you have described what Mr. Rose's point of view was, as expressed to you at some point in time.

I would like to know what, if anything, happened to those respective points of view during the course of the preparation of these documents?

A After reasoned discussion Mr. Rose acquiesced in my point of view.

Q And a disclosure was made with respect to the December 1970 sales in the prospectus, was it not?

A The point dealing with the comparability; that is correct.

Q And was that disclosure as made, in your judgment at the time, a full, fair and complete disclosure?

A I have every confidence that it was my judgment at the time that it was full, fair and complete.

Q Mr. Hinsey, there has been previously marked on one of the many discoveries in this case, as Plaintiff's Exhibit 462, a private placement memorandum in connection with a subsequent transaction that I will have some occasion to ask you about. And Exhibit 1 to Plaintiff's Exhibit 462 appears to be the prospectus of the 1971 public offering.

I show you that document and I ask you whether, in fact, that is what it is?

A Yes, it is.

Q Now, with that before you, sir, I have some questions that I would like to direct to you concerning it.

Would you turn to page eight of the prospectus, please?

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subject generally.

Q Now moving away from the subject of whether you discussed it with anybody or not, did you know whether there were bill and hold arrangements in connection with the 1970 sales, at the time that you were preparing this prospectus?

A I don't have that recollection. I do not recall that I did know.

Q Did you know whether or not there were allowances made to customers in respect of 1970 sales, in connection with bill and hold arrangements?

I am talking about, did you know during the period in which this prospectus was being prepared?

A As I believe I indicated at the last occasion that we had an opportunity to meet together, there is an annual Toy Fair held in New York City at which the toy manufacturers show their new lines, and at which new orders are solicited and booked.

It was my understanding then and it is my understanding now that in connection with the booking of new orders, a myriad of open items are the subject of negotiation, and part and parcel of the basic consideration package for the initial order for the new line; which would include advertising allowances of an incremental nature, would or could involve the arrangement to shift merchandise to another customer on an accommodation basis, and undoubtedly could have involved other similar arrangements that would be found in the business community, in an ongoing relationship between manufacturer and customer.

Now, in terms of bill and hold, as a general matter it is my general impression that your retail chains will use bill and hold and drop ship practices where they don't want an inventory; with the result that customers such as Kresge's, Grant's, Woolworth's, as part of the negotiation between manufacturer and customer, will extract from the manufacturer the benefit of warehousing until such time as they require merchandise sent to a particular store.

One could term that as bill and hold, or could apply appellations to it. But it is my understanding that this is a general practice, particularly where you have seasonal merchandise, and I have encountered in in other industries.

Q Have you completed your answer?

A Yes, I have.

Q Now, at the time that the prospectus was being prepared for the 1971 public offering, did you know whether or not any such arrangements as you have now just described had, in fact, been made at the Toy Fair in 1971 with respect

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Topper stored goods in a warehouse for its customers?

A Yes, there did.

Q When for the first time did that come to your attention?

A The warehouse I have in mind would have been December or January.

Q Of what year?

A '71, '72.

Q Do you recall reference in the course of your professional engagements for Topper to a New York Terminal Company Warehouse and to arrangements with respect to storage of goods for customers there prior to the date that you have identified?

A I have no distinct recollection of such arrangements, although if there were such arrangements, they probably did come to my attention.

Q I show you a document which has been previously marked as Plaintiffs' Exhibit 497, which is a copy of a letter to Mr. Jack Rose, signed "Sincerely, Joe" over the typed signature of Joseph Hinsey, to which is attached a two-page memorandum. The letter and the memorandum both bear the date March 16, 1971.

I show you the first page of Exhibit 497 and I ask you whether that is your signature.

A 1970

A No, it is not.

Q Do you know whose it is?

A That's my secretary's.

Q Did you transmit that letter at or about the time of the date it bears?

A Yes, I did.

Q Would you take a moment to look at the entire exhibit and tell me when you have done so.

Have you read it?

A Yes, I have.

Q What were the circumstances under which you spoke with Mr. Levie?

A I believe that Mr. Levie called my office when I was not there, or unavailable, and left word that he would like to speak with me.

I had never, to my knowledge, had any prior contact with Mr. Levie, but he identified himself as being associated with the law firm of Ratheim, Abrams, Hoffman & Castle, which was the law firm that had been advising First National City Bank on an ongoing basis with respect to the financing agreement of Topper Corporation.

I thought that perhaps Mr. Mitchell, who had been involved on an ongoing basis, might have been in contact with Mr. Levie, and while I was at the office of our firm located at 280 Park Avenue, I looked in on Mr. Mitchell and inquired whether he had any recent dealings with Mr. Levie. Mr. Mitchell said he had not, but in view of the fact that we assumed that Mr. Levie's interest was the financing agreement, we placed a call to Mr. Levie; and in conjunction with that, Mr. Mitchell asked Mr. Scheibe to participate on the assumption that if there was detailed legal work to be done, Mr. Scheibe would assist Mr. Mitchell.

Q Go ahead.

A I believe I responded to your question.

Q What was said in the course of the conversation which was then placed with Mr. Levie?

A I believe this memorandum that you have asked me to read sets forth the substance of the conversation. I have no separate recollection.

Q Does it, to the best of your recollection, accurately set forth the substance of the conversation?

A Because I have no recollection, it does.

Q Following that conversation and the preparation of the memorandum which is attached to Exhibit 497, did you have any conversation with Mr. Rose concerning your contact with Mr. Levie?

A As we undertook to do -- I undertook to do and as Mr. Scheibe has indicated, I forwarded a copy of the memorandum to Mr. Rose, apparently on the same day. Mr. Rose at a later point, I would assume shortly thereafter, spoke to me about it. He was disturbed and upset that Levie had contacted me.

He said that they were in discussion with First National City Bank on this and that he and management would take care of this, and that I was not to devote any further time to it.

This was in the context of a certain measure of ongoing tension between the bank and the company, and in light of that did not strike me as anything unusual or surprising.

Q Were there any other further conversations or contacts concerning the subject?

A None that I can recall, no.

Q Now, I direct your attention to the first page of the memorandum attached to Exhibit 497 and to that portion of it which recites that Mr. Levie in the telephone conversation that you mentioned a moment ago stated that he was concerned that such a "bill and hold" arrangement creates a substantial risk of the customer's rejecting the goods upon delivery in the future and thus jeopardizes First National City Bank's position in financing accounts

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redated certain receivables?

A As I believe I have stated previously, I had a very loose awareness of the possibility that in the context of settlement of outstanding disputes and issues in conjunction with the Toy Fair held here in New York, at which time the company solicited initial orders for the new toy line, that there would be settlement of amounts in dispute ~~owing~~ that could well involve a new maturity, a reduced balance outstanding, [illegible] allowances, a variety of things.

I never had direct involvement in these negotiations, if you will.

Q Focusing on the term "redating", did you, during the course of your representation of Topper, come to an understanding of what that term meant as applied to receivables?

A Could you rephrase the question?

Q Do you know what redating means as applied to a receivable?

A I have always though it meant the extension of the due date.

Q Of a receivable which had been already issued; is that correct?

A That's correct.

Q Do you understand that there is a distinction between that and issuing a receivable in the first instance upon terms longer than normal under the custom and usage of the company?

A Yes.

Q Using redating to define it as you have defined it, and using extended dating to mean what I distinguished it from in my last question, we have a common nomenclature we can use; agreed?

A Yes.

Q Focusing on redating, when did you learn of Topper's practices in respect to redating for the first time?

A I would be unable to give any point in time when I might have first become aware of this general practice that, as I understood it, was associated with the Toy Fair in New York City.

Q Where did you gain that understanding?

A I couldn't elaborate.

Q From whom did you learn about this general practice, as you described it?

A I couldn't specify an individual. I would assume in the course of ongoing contacts with the management of the company, I would have learned of it just in conversations, but I couldn't --

Q You don't recall with whom?

A No, I do not.

Q Did you ever learn the amount of redating of receivables, that is the amount of the receivables subject to redating at any given point in time?

A No.

Q Specifically in the spring of 1971?

A No.

Q Or September of 1971?

A No.

Q Have you told us everything that you recall concerning your understanding of the redating of receivables that was done in connection with negotiations that occurred at toy fairs?

A Yes.

Q To your knowledge, were the 1970 redated receivables paid when the later date came up?

A I did not have knowledge one way or another on that point.

Q Did you ever obtain that knowledge at some later date than 1970?

A Not that I recall. Regarding 1970, you say?

Q Yes.

A Not that I recall.

Q Specifically, did you know in September of 1971 whether the 1970 redated receivables had been paid?

A I did not. I have no knowledge.

Q Did you ever hear that they had not been paid?

A No, I did not.

Q In the course of gaining the understanding which you have told us about of Topper's redating practices, did there ever come to your attention any practice by virtue of which the receivables were redated from time to time until the customer of Topper sold the merchandise at retail, which was the subject of the receivable?

A I have no recollection of such practice or knowledge on my part of such practice.

Q In the course of the preparation of the prospectus for the 1971 public offering, were there discussions of the redating practices of Topper?

A I have no recollection of such discussion, but it may well have been the subject of discussion.

Q In connection with the preparation of the prospectus of that offering --

MR. CRACO: I'm sorry, I withdraw that.

Q Were there discussions concerning the redating practice in connection with a public offering of Topper securities in 1970?

A I have no recollection one way or the other.

Q You worked on that public offering as well, did you not?

A I did.

Q In the course of your work on that offering, did you send to the Securities and Exchange Commission a letter in response to certain comments contained in a staff letter of comments --

MR. CRACO: I'll withdraw the question.

Q Did you participate in the preparation of such a letter, and I show you Plaintiffs' Exhibit 464 in connection with my question.

A I have no recollection of the development of the text of the letter dated May 21, 1970 from Topper Corporation to the Securities and Exchange Commission.

Q In connection with the submission of responses to staff letters of comment relating to the prospectus of the 1970 public offering, was it the practice for White & Case to draft such responses?

A No, I wouldn't say that to be a practice.

Q How were the responses to the staff's letters of comments in connection with that public offering handled?

A I have no recollection at this point.

MR. CRACO: Let's mark these two sheets which have been handed to me by Mr. Thomas together as Exhibit 6 for identification. They consist of copies of six diary entries.

(Two sheets consisting of copies of six diary entries marked Hayden Stone-Hinsey Exhibit 6 for identification, as of this date.)

BY MR. CRACO:

Q I show you Exhibit 6 for identification, Mr. Hinsey, and I direct your attention to your diary of May 19, 1970. That is a copy of your diary for that date, is it not?

A It would appear to be such.

Q In respect to Topper Corporation, initial public offering?

A That's correct.

Q Does that diary reflect that on May 19th you did certain work in connection with a response to SEC comments?

A Yes, it does.

Q Do you have any recollection of having done so?

A No, I do not.

Q Does that diary accurately reflect what you did on that date, to the best of your knowledge?

A I assume it does. I have no different

recollection.

Q Would you look at your diary on the second page of Exhibit 6, reflecting the work done on the same matter on May 20, 1970.

Does that diary indicate further attention of letter of transmittal to SEC for amendment number 1 and company letter responsive to comments?

A Yes, it does.

Q Do you have any recollection of that?

A No, I do not.

Q Is your answer with respect to that diary the same as with respect to the prior day's diary?

A Yes, it is.

Q Are you able to state whether or not the comments which are referred to in your diary entries of the 19th and 20th to the SEC are the comments reflected in the letter of May 21, 1970, which is Plaintiffs' Exhibit 464?

A No, I am not able to state that. I can only assume that this letter was in response to comments received. I have no recollection of it.

Q Having before you the diaries that reflect the work that you did in connection with this matter, would you direct your attention to the second page of the letter, Exhibit 464, and the language immediately following the table of figures in paragraph number 4, and take a moment to read that to yourself.

Did you have any conversations with Mr. Rose concerning the information contained in the paragraph to which I have directed your attention?

A I have no recollection one way or the other.

Q Do you think it probable that you did?

MR. HARTFIELD: I will object to that.

MR. CRACO: I understand. Are you directing the witness not to answer?

MR. HARTFIELD: Oh, no.

A No, I wouldn't think it probable. It was entirely possible.

Q Do you know where the data that are contained in that paragraph came from?

A No, I do not.

Q Returning to September of 1971, prior to September 28, 1971, did you have any information as to the movement of goods manufactured by Topper at retail?

A I have no recollection of such information.

Q Do you have any information concerning the movement of Dawn dolls at retail at the same time?

A I have no recollection of the movement of Dawn dolls at retail.

* * * *

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Q Was your advice taken?

A I do not recall whether --

Q Well, looking at the exhibit now, can you tell us whether your advice was taken?

A No, I couldn't.

Q So your testimony, as I understand it, is that you have no recollection which enables you to say one way or another whether the press release of October 26, 1971 concerning the third quarter results reflect your views with respect to its not being misleading in tone?

A That's correct. I think that the record should state that the document which we have just been discussing has the financial information attached.

Q The record will reflect that, Mr. Hinsey, because the exhibit has been identified. What I am trying to get at is your recollection of the circumstances of how it came to become a public document.

I take it you have exhausted your recollection on that point; is that correct?

A Yes, that is correct.

Q When for the first time did you learn that Topper anticipated a loss from ten to fifteen million dollars for the year 1971?

A On Friday, December 17th.

Q And how did you learn that?

A That was the estimate that the management had at that point developed.

Q Did you learn it at some meeting?

A That's correct.

Q Describe the meeting.

A It was a special meeting of the Board of Directors where the Board was apprised for the first time of the apparent losses that had been visited or were being visited upon the company.

Q Who apprised the Board for the first time of that information?

A The management.

Q Who?

A Mr. Orenstein primarily.

Q What did he say?

A I could not recall at this point specific monolog.

Q Did he offer reasons for these results?

A Yes.

Q What did he say?

A The reasons were basically outlined in a letter that was sent to stockholders.

Q I'm asking what he said in the Board meeting.

A I don't recall the exact dialog.

Q I'm not asking for the exact dialog, Mr. Hinsey. I'm asking for your best present recollection of what Mr. Orenstein said when he broke this news to the Board for the first time.

A As I recall, he indicated that the management had concluded that the spring merchandise program which had been a significant factor in the current year should not be continued.

He indicated that the Topper lines of toy products were not selling through, as I recall, at retail and the company was not getting the type of reorders that they expected and should have been receiving.

It was a relatively long meeting, so I'm sure there were other aspects that he discussed.

Q In connection with the company's products not selling through at retail, did he indicate when that discovery had been made?

A As I recall, rather recently prior to that meeting.

Q Do you recall what he said about that point any more specifically?

A No, I do not.

Q Did he say anything about sales during the

* * * *

Q You have no memory one way or the other?

A No.

Q Did there come a time, Mr. Hinsey, when you learned that Topper had granted certain rights of exchange to certain customers under the spring 1971 program?

A There came a time when I learned of some rights of exchange. I don't recall that they related specifically to the spring 1971 spring merchandise program.

Q When did that come to your attention for the first time?

A I recall it very vividly because it was a Friday evening in January and I was called at home, 1972.

Q Was the telephone call to your home on the Friday evening in January of 1972 the first time that you had heard about the rights of exchange that you are about to describe?

A Yes.

Q Who called you?

A I believe it was Mr. Provine.

Q What did he say?

A He reported to me that the company had turned up in response to a request made by the American Stock Exchange for correspondence and other materials, as I recall, approximately fifteen letters that indicated a right of exchange of merchandise, that this had been found in, I believe, one of the marketing executive's papers, that Mr. Rose was extremely upset by this discovery, this development, that he had -- Rose had reported it to Arthur Young that evening or whenever this appeared. That was essentially it.

Q Do you recall approximately what time of night you got this call?

A It was during the evening.

Q What did you say?

A Well, I'm sure my initial reaction was one of shock.

Q Did you express that to Provine?

A I'm sure I did.

Q What else did you say?

A There was not too much else to say.

Q Did you give him any instructions?

A No, I don't believe the context of the call was one soliciting instructions. It was more to report to me the development.

Obviously the letters were to be furnished to the American Stock Exchange, and I think that was done the next Monday morning.

Q Did you have any further conversations with anyone that night concerning this same subject?

* * * *

subsequently. It was discussed I believe with others, very possibly at a Board meeting. I may well have seen one or more of the letters.

Q So when you say that you did not get copies, you mean you did not get to keep a copy but you may have seen a copy along the way?

A I may very well have seen a copy. I may very well have seen all of them.

Q Did you have any discussions with management after your conversation with Provine as to why these letters had not been disclosed earlier?

A Yes, I believe I did.

Q All right, tell us the circumstances of that conversation, including who was present at it and where and when it took place.

A I do not presently recall the circumstances and who was present other than a recollection that I discussed the matter with Mr. Rose.

Q Okay. Tell us what the substance of that conversation was.

A Mr. Rose expressed to me his shock and distress that such letters existed and had not been made known to him or to the accounting department at the company or to Arthur Young.

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(Discussion off the record.)

A Yes, I have.

Q Do you have any recollection as to the approximate number of such offerings in which you have had any legal participation?

A No, I wouldn't have present recollection.

Q Were there perhaps more than ten?

A I would doubt it.

Q More than five?

A Probably not.

Q Is it a standard practice of White & Case in a circumstance in which it represents an issuer in a subordinated debenture offering to communicate with any or all senior lenders with respect to that offering?

A No, it is not.

Q I show you a document which has been marked as Citibank Exhibit Number 36 for identification, and I ask whether you saw that document on or about the date it bears.

A I have no recollection of seeing this letter.

Q Were you aware that such a letter was being sent on or about that time?

A I was aware that the terms of the subordination provisions were to be cleared with the senior lender.

Q What was the reason that those terms were to be cleared with the senior lender?

A Well, I think that if the terms are not set out in the debt instrument or annexed to the debt instrument that evidence or pursuant to which the senior debt instrument is issued, it would be appropriate in the normal course to clear the terms of the subordination because generally the senior debt instrument requires that such terms be satisfactory to the senior lender.

Q Did you have any knowledge in the course of your work on the private placement of Topper securities which closed on September 28, 1971 of whether the senior debt instrument between the lending banks and Topper required a submission to those lending banks of any proposed subordinated lending arrangement?

A I do not presently recall whether this was required under the terms of the bank financing agreement.

Q Did you instruct Mr. Provine to notify the senior lenders with respect to the terms of the subordination provisions?

A I may very well have.

Q Is it your recollection that these subordination provisions were in fact sent to one or more of the senior lenders for approval?

A Yes, it is my recollection.

Q Do you recall whether the entire purchase agreement was sent to one or more of the senior lenders in that connection?

MR. BICKS: You are talking about prior to the private placement?

MS. BAMFORD: Right, prior to the private placement.

A I really -- I do not recall. Looking at what is before me, it appears that the -- just the subordination provisions were sent, and it would thus appear that the entire agreement was not made available.

Q Can you state today any reason why the entire loan agreement,or I should say purchase agreement, was not made available to the lending banks?

A The only reason that would come to mind would be a suggestion on the part of the client that just the subordination provisions be submitted.

Q Is it your testimony that such a suggestion was made in this case?

A It may very well have been made. I don't have a specific recollection, but it is entirely possible that that was suggested by the client.

Q Can you relate to us the circumstances under which any such suggestion may have been made?

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A No.

MR. CRACO: I'll object to the form.

Q Can you state the substance of any such suggestion as you presently recollect it?

A No, I cannot, because I do not have a firm recollection that such an instruction was received from the client.

Q Did you have any understanding prior to the private placement as to why Topper would not want to inform the lending banks of the entire substance of the purchase agreement?

MR. CRACO: I object to the form.

Q Go ahead and answer.

A No, I have no recollection as to what -- I alluded earlier to a certain measure of ongoing tension between the company and Citibank. That might have had a bearing. It may well have been a feeling that the entire agreement would have occasioned a referral to the law firm that was involved on an ongoing basis which in the due course would have cost Topper the time and expense of the law firm reviewing the document.

Q Did you engage in any communications with First National City Bnak or with any of the other lenders in connection with the private placement which closed on

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memorandum or letter or what have you, I do not presently recall.

Q Do you recall whether it was necessary to make any writing with respect to the making of a loan in excess of the applicable loan formula?

MR. HARTFIELD: I object to this. The agreement speaks for itself. The witness' memory as to what the agreement said is irrelevant.

Q You referred earlier today to a conversation with Topper management which took place on December 13, 1971; is that correct?

A Yes.

Q You testified, I believe, that you advised Topper management to contact the banks and to get a better grasp of the situation prior to contacting certain or all outside directors; is that correct?

A The management had already determined the absolute necessity of communicating with their principal lenders.

Q Did management state the reason that they had made that determination?

A As I recall, yes. First, they felt it obligatory that the lenders be apprised of this development. Secondly, as I earlier stated, there was a substantial impact on the amount of the loss that turned on whether or not the spring merchandise program was to be continued or to be discontinued, and in effect they said that they would defer to the banks as to which alternative was to be adopted.

Q Is it your testimony that a decision to discontinue the spring program or the plan to have a spring program for 1972 had not been made as of December 13, 1971?

A That is correct.

Q Are you aware of when that decision was made?

A It was made during the course of that week. I could not pinpoint the time any better than that.

Q Can you explain how you understood the decision as to whether to have a spring program for 1972 to relate to the substantial impact --

MR. HARTFIELD: I object to that question as to form.

MS. BAMFORD: Could you read back about two answers ago, the statement with respect to substantial impact?

(Record read back by the reporter.)

Q When you testified that a substantial impact on the amount of the loss turned on whether the spring 1972 program would be continued or not, what did you mean by that statement?

A Well, as you will recall, there was approximately fourteen million dollars of sales recorded as -- included as sales for the year 1970, sales that were made principally in the month of December and were associated with the spring merchandise program.

Whatever sales had been programmed, had been planned for the spring merchandise program in 1972, would have had a comparable effect for let's say the calendar month of December in 1971. If we assume that the amount involved was the same fourteen million dollars, this by definition would eliminate fourteen million dollars of sales that would have been reflected in the calendar year 1971, that would have been associated with a spring merchandise program for 1972.

There had also been certain expenses incurred already which would have to be absorbed without any benefit.

Q At this December 13th meeting in which you discussed the possibility of discontinuing the spring 1972 program, did you have any understanding as to how continuation or discontinuation would affect the lending banks' collateral?

A Not completely. The management seemed to feel that the receivables that were generated by the spring merchandise program based on their experience in 1971 were not the same type of receivables that they had historically used for bases of collateralized lending.

I did not fully understand the substance of the concern at that point, but they seemed to have reached that conclusion.

Q Did you have any understanding as to why the bank would be interested in the subject of whether the program for 1972 was continued or not?

A Well, no, not specifically. This seemed to be the sentiment of management and, as I previously indicated, it was a relatively short meeting and we didn't get into that detail.

MS. BAMFORD: Thank you.

(Luncheon recess taken.)

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they could borrow money. Under the guidelines set up it didn't generate enough borrowing capability to cover their cash flow needs.

Mr. Orenstein suggested that he would put up the money, but he wanted to be covered by the collateral. He would put up a short fall, but he wanted to be covered by the collateral.

We suggested we accept that, provided we had some priority over the collateral, and an agreement was drawn.

Q And the banks did have priority over Orenstein in the collateral?

A That is my recollection.

MR. BICKS: Off the record.

(Discussion off the record.)

Q May I call your attention particularly to the last page of that agreement, paragraph 9 on that page.

A Yes?

Q Do you recall the circumstances under which that clause was inserted?

A It was our practice in setting up a line of credit for this account, which we did annually, to have them submit projections as to what their cash needs would be and when they would need it and what collateral would be generated to secure it. We would set up a line of credit and agree upon the guidelines and time, and that probably refers to the underlying projections that were submitted when we set up a line of credit for the year in question.

Q Previously you testified generally as to the nature of the responsibilities and activities by Citibank in supervising the collateral. Was a review of those projections one of those responsibilities?

A Yes. Several people would review them.

Q Who would really?

A Waldman, Seidman, myself, other people in the department.

Q I believe the agreement which has been marked Plaintiffs' Exhibit 512 is dated in the early part of the year, February '67. I would like to show you an agreement which appears to be dated the 20th day of September 1967. It appears to be because it says "28 December," oddly enough, and the context appears to be dated that. I ask you if you are familiar with the substance of the arrangement therein reflected. I call your attention to this. You are familiar with the substance of that agreement?

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some years in this business. What was the basis of your thinking with regard to redatings?

A Redatings, as I understand the term used in that memorandum, represented merchandise that was shipped in one season, and which was due and payable according to terms extended in that sale, which probably were not sold by our client's customer during that season, the customer having come back to our client and asked for some relief in his obligation to pay the invoice.

And in order to keep his customer happy, an agreement was entered into, in which our client extended the dating terms to a new season.

It was my judgment that that type of account should not be considered as an eligible account receivable entitled to an advance.

Q For what reason?

A The reason that it was not originally paid according to terms, and it was my judgment in handling any account that if merchandise was not paid according to original terms granted, it didn't represent an account receivable that had the same integrity as one that did pay according to terms or substantially in accordance with terms, and it was not entitled to the same credit worthiness.

are going to sell, what do I think about what we would carryover or what we would have to redate, I would work with Fred and so forth, and what happened to it after that, I don't know.

Q Did you supply any figures to the finance department concerning the amount that would have to be redated?

A. No.

Q Do you know whether Circus World received a letter evidencing their exchange privilege on the spring purchase?

A. I would say yes.

Q Do you know who signed it?

A. I might have; I discussed with them their purchase by phone and I think I might have made up a letter and made it out to them; I am not positive.

Q Are you aware of the fact that Arthur Young sent requests to confirm forms to all the customers at Topper with respect to the accounts receivable as of December 31, 1970?

A. Yes.

Q Did any of your customers or any customer that you had given an exchange privilege indicate that you had given an exchange privilege in their response to Arthur Young?

A. I wouldn't know, I mean, the responses. I knew we sent out whatever; and I knew that there was a list supplied to us to contact the customer and tell them to get them in, to facilitate the order, but I don't know that they weren't sent to us. They were sent to Arthur Young and the only thing is we were instructed to do this just to get the order going. I guess that most people normally throw these things in the wastebasket and they wanted them back.

Q Did you receive any instructions to give the customers any information concerning the exchange privilege when you called them about it?

A. We asked them to send back the confirmation as it was written and if they raised any discussion or anything like that, I said, "We had a letter so what's the difference?" And that's the only thing that would happen.

Q Well, were you instructed to tell them not to disclose the exchange arrangement to the accounts in words or substance?

A. I would say probably yes. I don't know whether those specific words were given, but we were told that the customer should return the confirmation the way it was, and, you know, not make any notations on it, something like that, so in effect, that's exactly what they are saying.

Q Who gave you the instructions?

A. They would come to me by way of Fred Pierce and I don't recall exactly who gave them to me but nobody really would give them except Fred Pierce.

Q How were you to carry out this; were you personally to call all the accounts?

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A Oh, no, no. I might be given some accounts to call. Salesmen were given some accounts to call; accounts that they knew. I would know some accounts. Fred would know some accounts; Henry would know some accounts; and the salesmen would know some accounts.

Q Were you given any memorandum, anything in writing concerning what you were expected to do?

A No.

Q When did you receive this request from Pierce?

A I don't really know; I guess sometime in January, I mean, I can't -- I don't know.

Q Do you recall the specific language that he used concerning notations being placed on the confirmations?

A No, I don't.

Q Well, what was the substance of the information that he gave you in the instructions?

A The substance was that the customers were to instead of throwing the confirmation in the wastebasket like they generally do, to call the customer and ask them to send them in and then I guess - I am not sure whether you mentioned it at first or whether the question was brought up when I maybe called a few customers and they said, "What about the exchange program?" - Then I either asked or he told me; I don't really know, that they should send them in without the notations.

Q That is notations relating to the exchange program?

A. Yes.

Q Would he indicate why he was asking you to ask the customers to respond to the questions; did he indicate why he was asking to respond to the confirm?

A. Yes, the reason that he gave was that normally these people will throw these confirmations in the wastebasket and we wanted to get out an order real quickly. We had to have a certain percentage of them come in and that was the only reason he gave me.

Q Did you ask him whether he had cleared the instructions with respect to notations on the confirm with Henry Orenstein?

A. No, I didn't.

Q Or Jack Rose?

A. No.

Q Or with anyone?

A. No.

Q Did he indicate that he had checked with anyone?

A. No. Well, Fred, no. He didn't indicate, but Fred generally got his instructions, you know, he had to get instructions from some place; I don't have any idea where he got them or who he got them from specifically but --

Q Did he indicate why he wanted a quick audit or why he wanted the audit completed as soon as possible?

A No, he didn't. He just said that we wanted to close the books; we wanted an audit; and we wanted to get the confirmations in. I seem to remember him saying to me, you know, you need a certain percentage of these in and most people will throw them in the wastebasket, so, you know, I don't know. I never heard before of any percentage we needed or anything; it was new to me so I just did it.

Q I have a five-page set of documents that has been marked collectively as Exhibit No. 53. The document is figured in the left-hand corner. The first page appears to be a letter from A. M. Negrin of Washington Distributors, Incorporated, dated February 5, 1971, addressed to Arthur Young Company. I will hand you what has been marked as Exhibit No. 53 and ask you if you have ever seen a copy or an original of that?

A No, I never did.

Q Directing your attention specifically to the fifth page which appears in handwriting, I will ask you whether you have ever seen that page or a copy of it?

A No.

Q Did you have any discussions with anyone at Topper Corporation concerning an exchange privilege for Washington Distributors, Incorporated?

A As far as I know, that order was written by Jerry Jones; I might have discussed it with Jerry Jones; I don't recall. I would say basically I wasn't involved in it.

Q How many customers did you contact with respect to the Arthur Young confirmation, approximately?

A I really don't know; maybe a dozen.

Q And do you know whether other salesmen were asked to do the same thing?

A Yes, I am sure they were.

Q Do you know whether Pierce advised the other salesmen to tell the customer not to put notations on the confirm?

A I guess he did.

Q Well, did you tell them?

A I might have called some salesmen; I don't remember. I might have called some salesmen. We would normally divide up a list if we had instructions to salesmen and we were going to do it by phone, we divided this and somebody said, "You do this and I will do the others."

Q How was Pierce's instructions relating to notations on the confirmations passed on to other salesmen?

A By phone, I would guess.

Q Did you advise other salesmen of his instructions as to putting notations on it?

A I probably did so; I don't remember exactly but I probably did.

Q I note to the right of S&H Company on page two of Exhibit No. 73 appears the phrase, "Account has protection nobody is trying to trip you up here.

What is your best judgment in light of this as to when the meeting occurred, your first meeting?

A It probably occurred prior to that time because -- as I remember, the first time that I knew anything about it, being involved, I could conceivably be wrong, but it was at that meeting.

Q Okay.

A As I say, nobody talked to me before that meeting. I got a note.

Q Okay.

A The meeting could have taken place in March. I don't know.

Q All right.

MR. BICKS: Would you mark this for identification as Plaintiffs' Exhibit 582.

(Document described below was marked as Plaintiffs' Exhibit 582 for identification, this date.)

Q I hand you --

A This is --

Q Pardon me. I hand you, Mr. Inglis, a document marked for identification as Plaintiffs' Exhibit 582 which appears to be a typewritten memorandum bearing

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A Henry Thompson requested a break-in analysis which we hadn't -- placed in the memorandum which purported to show at what volume the company could exist, certain information with respect to lag time and slowing down of sales, inventory and that nature.

Q Maybe I can help you here.

MR. DICKS: Would you mark this for identification, please.

(Document described below was marked as Plaintiffs' Exhibit 584 for identification, this date.)

Q Mr. Inglis, I hand you a document marked for identification as Plaintiffs' Exhibit 584 consisting of a two-page carbon copy of a letter bearing the date August 19, 1971 from Mr. Jack J. Rose to Mr. Leonard Hiernymas showing a cc: to Jay Inglis which refers in its first paragraph to the fact that "We, Topper, has been requested to prepare projections of the minimum operations which would be required to satisfy interest coverage and convertible debenture --"

A Right.

Q Do you recall receiving a copy of that letter? And is that the projection that you are talking about?

A Yes, that is correct. That is correct. Thank you.

Q And you received a copy of this?

A Yes.

Q And --

A I sure did.

Q And the materials that were prepared at Mr. Thompson's request that were sent to --

A Right.

Q I show you a document previously marked for identification as Plaintiffs' Exhibit 580 which consists of a one-page typewritten memorandum from C.B. Sterrett to S. Weill that shows cc: Mr. Inglis, among others, and I ask if you remember receiving that.

A Yes.

Q Thank you.

MR. BICKS: I don't think I have any further questions.

MR. ROSENFELD: No further questions at this time.

MR. ROWE: No questions.

MR. LAST: I have some questions.

THE WITNESS: Can you identify yourself?

MR. LAST: I will identify myself. My name substantially amiss in that memorandum to them.

It is a small consolation sitting here today, but those are the facts. Nobody discovered anything that we didn't discover.

Q During the course of your dealing with Topper in the summer of '71, did you ask anyone whether the extended term of accounts receivables had been paid off?

A No.

Q Any of them had been paid off?

A We asked, I'm sure, we asked about the receivables. We were told the bulk of the receivables were due in August or September, one of the two. And that there was no reason to doubt that they would be paid off on schedule.

Q Do you know Leonard Hieronymas?

A Yes, I do.

Q Who is he?

A He is with Connecticut Mutual.

Q Did you accompany him on a visit to Topper?

A Yes, I did.

Q More than one?

A I don't believe so. I think he was only down there once.

Q During that visit did you talk to Jack Rose?

A I'm sure we did. We talked to every senior officer. I would include Henry, David Endowns, Jack Rose, probably the

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activities of Topper's products.

As I say, from my standpoint, after receiving the answer that the products had been gone, had been sold off the counters, sold to retail customers and that their customers were reordering Dawn again, I had no reason to be involved in the receivables.

Q Was that substantiated to you, that the same customers were reordering?

A I had no reason to disbelieve it. I was told it on a number of occasions.

BY MR. SCHATZ:

Q By whom?

A The principal officers of Topper.

Q Did you have any reason to question whether or not actual shipments were being made to the jobbers and distributors of Topper Corporation?

A Shipments of what?

Q Of merchandise?

A I was told the shipments were going out as projected.

Q Did you have any occasion to discuss unusual sales practices and terms in connection with the orders received by Topper Corporation?

A We asked about returns. We were told that the returns had never been a major problem since the new Topper was born. The old Topper, the history of the business and their selling on consignment was well-known and, of course, was reviewed extensively by every potential institutional investor.

As far as the new Topper was concerned, we were told that there was no return problem, that they would switch merchandise from customer to customer. If somebody called and said, "We have too much Dawn but we need Ding-A-Lings," they would find somebody with too many Ding-A-Lings and too few Dawns and they would switch.

BY MR. SHUKOVSKY:

Q A balancing of inventory between the customers which would not affect at all the operations of Topper?

A Yes.

Q Did you ask Topper whether they had granted any rights of return or exchange to any of its customers?

A Certainly, I did. I was told that only with respect to damaged merchandise did they have a right to exchange. But, of course, in terms of customer goodwill they would do what they could on a balancing

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basis to balance the inventory.

Q Whom did you ask that question?

A Both Jack Rose and Mr. Orenstein.

BY MR. SCHATZ:

Q Did you discuss unusual sales practices and dating terms with Mr. Pierce?

A No, I did not.

Q Can you explain why you did not?

A Because I had discussed the practice both with Henry and with Jack Rose and I had received answers that the Spring Program was done for competitive reasons, that Ideal and Mattel had done even more than they did in terms of extended terms.

As a matter of fact, I was shown invoices showing Ideal and Mattel on an extended-term basis. I was told all the products had moved and I saw no reason to talk to Fred Pierce about it.

Q Why were you shown the Mattel and Ideal invoices?

A Because I wanted to find out if it were truly an industry-wide practice or whether it was just an isolated Topper deal to finance the inventories of their customers in order to get sales. When I was shown the invoices and heard it was not --

Q Was it the largest account in your department in 1972?

A Yes.

Q 1971?

A Yes. No, when I say largest or refer to size, I am talking about this lump of all related accounts. You say U.S. Steel.

Well, I can quote you a U.S. Steel account that might be much smaller than XYZ company account.

When I refer to account, I am talking about the whole ball of wax.

Q I understand.

Does the bank provide periodic investment advice to the U.S. Steel and Carnegie Pension Fund, to your knowledge?

A Not on specifics. We have sort of a discussion of the economic and investment atmosphere on a regular quarterly basis which I run.

I sign up people from the pension fund, U.S. Steel Pension Fund and sign up our chief economist or one of his assistants and generally, the head of our own pension addition, pension fund addition and generally the head of our investment research department, and they normally talk about the economic environment, the market environment.

They don't get down to specifics. Certainly, we don't tell them, "Gee, this is a good stock, buy this one, and it is time to unload that." or what not. It is generally a quarterly review of the economic and investment marketplace.

Q . You made reference to the research department. Is that a subdivision of your department?

A No, that is part of our -- used to be named the Trust Division. Now, under our new nomenclature, it is called the Investment Management Group.

Q Is such investment advice available to all of your accounts?

A For a price.

Q What is the pricing arrangement that you have with respect to this investment advice?

A Well, it is really related to balances. It is when I really say -- when I say for a price, if they are that good an account and want it, we would do it for them, any one of our major relationships.

I don't think we negotiate a dollars and cents price. Certainly nobody that I have anything to do with.

On the other hand we also handle just the physical possession of their securities for them. We call this a custodian account and there is a price attached to that, too.

And I believe that is a different area than mine, so this is some sort of my understanding rather than my telling you these are the facts.

My understanding is that the price they quote includes this service from the Investment Management Group, this advisory service from the Investment Management Group.

But don't ask me specifics. I don't know the dollar numbers on it.

Q Have you ever attended a session in which U.S. Steel was given such investment advice, information by the bank?

A I attend them all. Ever since I took over the department in 1970.

Q Had there been occasions when the bank has indicated to U.S. Steel what transactions it has effected for its managed accounts or pension accounts?

A In general terms, not in terms of this specific company stock or that specific bond issue, but they will discuss consumer goods or retail stocks, one phase of the business cycle, or capital goods or glamor or, you know, IBM type, Xerox, that type.

You know, various phases of the cycle, rather than saying we are buying XYZ.

I don't think they have done that. They talk in terms of groups or sectors of the investment array.

Q Have they indicated that the bank was purchasing stocks in particular groups?

A Yes. Sure.

These meetings generally start off with a review of the economy and economic outlook and then the investment fellows come along, and they sort of relate that to the impact on their investment policy.

It is really a policy discussion rather than that much of an advisory session on specifics.

Q Does the bank manage any of the funds of U.S. Steel? That is does it select stocks?

A Not that I know of, no. That is what U.S. Steel and Carnegie Pension Fund, Inc. does. As far as I know that is what they are paid to do. We don't that I know of.

Q For example, does the bank have as a trust account any of the pension plans of U.S. Steel subsidiaries and affiliate companies?

A I would say not that I know of. It is hard for me to conceive of it, but it is such a huge, you know, so many subsidiaries, it is quite possible one or more, and I wouldn't know about it all even though the basic relationship is domiciled with me.

As far as I know, the answer is nok but I certainly couldn't state that definitely.

MR. LILLIE: You mean the complaints could come about?

A The complaint and really, as I say, I think the reason it came about was the language barrier that their pension investment guy just didn't understand the language of somebody who is in the factoring business there. Just different universes.

Q Did you ask Mr. Waldmann what he had told the Pension Fund about Topper's financial condition?

A Well, it is not a question of asking him. I think he told us at the time he spoke to him, he had indicated that this was one of the important customers of the factoring department, explained how we loaned money to them on a secured basis.

I don't think he ever discussed, he ever told us that he discussed the characteristics of the toy business which to me would be a pretty important point in analyzing an investment I was going to make.

But he apparently reported to us more on the specifics of his relationship and how he had viewed the company at the time of the discussion with Mr. Thompson.

Q Did you ask Waldmann whether he had given Thompson a favorable report on Topper?

A Well, again, I think he just was telling us what had gone on and indicated at that point that quarterly reports were coming in on a favorable basis.

We were lending them on a secured basis a fairly substantial amount of money.

I don't know how much that was, but this is one of the important borrowing companies of the factoring division.

I got the impression that he had given him a fairly favorable report.

Q Did you get that impression from your conversations with Waldmann?

A Well, I can't distinguish between what I heard directly from Waldmann and what I heard via Garvin. These conversations were a long time ago and they were all in the same topic.

And frankly I would be talking to one or to the other and just to get the whole picture. I was playing a very passive role.

I just was trying to get as fully informed as I could.

Q To your knowledge did Garvin have any other source of information other than Mr. Waldmann?

A I don't know.

Q What steps did Mr. Garvin take to investigate the matter, if you know?

A Well, I am sure he talked at length to Waldmann

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Q I direct your attention to the sentence about the middle of the first paragraph under, "Comment," which reads:

> "An increasing percentage of volume is in lower priced, less seasonal items with approximately 60% of present sales from product categories which retail for under $2."

Was that sentence or any of the facts contained therein a matter of discussion between you and Mr. Mole at this time?

A No, not that I recall.

Q I call your attention to the next sentence which reads:

> "Over the past decade Topper's dependence upon the Christmas season has been reduced markedly and this trend is expected to continue aided in part by the additional stability of Sesame Street line whose revenues are projected to increase from seven million this year to 20 million in 1971."

I ask you, to the best of your recollection whether that sentence or any of the facts related therein were the topic of discussion between you and Mr. Mole at this time.

A No.

Q I call your attention to the second paragraph under, "Comment," still on the first page now, the part five lines down toward the end of the line where it reads: "It has also impressed us with its depth in business," and I ask if that fact was the topic of any discussion between you and Mr. Mole at this time.

A No, I wouldn't have discussed that, because that--if it hasn't been there, we would have discussed it. But they say--Henry Thompson says, we, I don't know who we was, accept, either Henry did it or was in charge of it and they visited it and in addition to the support they had from people who knew them better than we did, Henry himself was impressed with certain things that he observed during his visit.

Q I call your attention to the first full sentence on the second page of this exhibit, which reads:

> "Management is noted by the retail trade and its banks for its cost controls and production capability and does not commit large capital investments for tool and molds until order trends are clear."

I ask whether when you read the memorandum you had an understanding of the source of the statement that management was noted by retail trade for the matters that have been detailed.

A Again, it's a matter of having the confidence based on the experience with the people--the analysts in the Pension Fund.

A statement like that means that they checked a number of people without knowing who they were in the retail trade to get some reaction to this producer's products, were they good, bad or indifferent.

At the same time, they also ran a credit check with the banks, whoever were involved.

Q You used the expression in that answer, "without regard to who they were."

A Without knowing the identity of the people that they call upon. The absence of this statement would have raised questions. The fact that it's incorporated means that they had done their normal investigatory job in checking out markets and reactions of customers to the product and they also had checked out the banks, whatever the relationships were with the banks.

Q That phrase, "without knowing who they were," meant that the reader of the memorandum didn't know who they were but the investigator would know who they were?

A Yes, it gave me confidence that he had done his normal thorough job in checking out these other aspects.

Markets are certainly important to a toy manufacturer. He checked out the retail trade. That was

A No. * * * *

Q Do you normally do any independent checks on your own after reading about the checks done by an analyst at the Fund?

A Very often when one of us on the committee by happenstance would know an industry or a company, we will have reasons to question, to recommend, to suggest a method of further effort or a course of further effort or a different aspect of the potential investment. Not having any capacities in toys, I didn't have anything to suggest.

Q Is a bank check normally made by the investigator on any type of investment in which the Fund participates?

A I wish you would--normally the opinion of a bank is sought. It is of greater importance, depending upon the investment.

I would guess we don't check the banks on General Motors. I would guess we do a lot of checking--I know we do a lot of checking of companies that are not listed on the big board and many who are listed on the big board.

Q Does the fact that an issuer of a security in which you are investigating participation of an outstanding bank loan have any effect on the likelihood of your investigator making a contact to a bank?

A The nature of the loan, its maturity, its security are all important, yes.

Q Would an investigator in a situation in which such an issuer has a secured loan be likely to inquire into the nature of the security?

MR. BICKS: You are aware, are you, that you changed the basis of your question?

MS. BAMFORD: Somewhat.

MR. BICKS: You asked him before if making an investment in any company that borrowed money, they checked with the bank.

MS. BAMFORD: Yes.

MR. BICKS: Now you are referring it to a secured loan.

MS. BAMFORD: Yes, I meant the change.

A What is your question again?

MS. BAMFORD: Why don't you repeat it.

(The record was read.)

A Yes.

Q Have you ever had experience in investing in companies which had loans secured by accounts receivable, to your knowledge?

A Personal or on behalf of the Fund?

(Document as above described, marked Plaintiffs' Exhibit 710 for identification, this date.)

BY MR. BICKS:

Q Mr. Lusk, I hand you a document marked for identification as Plaintiffs' Exhibit 710 which appears to be a memorandum from A. J. Lusk, AVP, to contract file bearing the date December 4, 1969 and I ask if you wrote that memorandum.

A Yes, I did.

Q That memorandum, does it not, purports to report on a luncheon meeting that you and others at the bank held with officials of Topper?

A That is right.

Q I guess in various positions you were involved with Topper from 1966 to 1973, were you not?

A Well --

Q In various positions at the bank?

A I don't believe that I was --

Q In 1967?

A In 1966.

Q 1967?

A Probably 1967, right.

Q Towards the end of each year, would

officials of the bank sit down with Topper and review what had happened in the year just ending and endeavor to project what was to happen in the year ahead?

A Yes, except that we wouldn't endeavor to project what would happen in the year ahead. They would.

Q You would listen to those projections?

A Yes.

Q Was that luncheon one of those end-of-year reviews? Can you tell by looking at the memo?

A (Reading) Yes, it appears to be such a meeting.

Q I call your attention to the last paragraph which states that "Jack Rose is preparing a preliminary projection for next year and they will be in touch with us again as soon as the figures are ready."

I ask you, generally, for the period of 1967 through 1973 that you were involved with Topper, what role did projections supplied by Topper play in the discharge of your responsibilities?

A Well, the projections submitted were an indication on a monthly basis of what the company's borrowing needs would be and what the collateral aat that particular point in time would be. And we would use that as a basis of establishing the line of credit for the following year and making our judgments prior thereto.

Q Would they, in addition to indicating available collateral and cash needs on a monthly basis, I think you said --

A Yes.

Q -- endeavor to project annual sales?

A Yes.

Q Would you also view those projections then as one indication of the health of the company?

MR. GRIFFIN: I object to the form of the question, on the record, please.

A Yes.

Q Did you understand the question?

MR. LILLIE: Let's have the question read back.

(The question was read.)

Q If at any time you don't understand any question that I put to you, just say so, okay?

THE WITNESS: Right.

A Yes.

Q All right.

MR. BICKS: Will you mark this document dated December 29, 1969, a memo, as Plaintiffs' Exhibit 711 for identification.

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Q What was the purpose of your consulting with him whenever you did consult with him prior to establishing it?

A Well, Jack Rose was a fairly astute financial man and we placed some value on his judgment.

Q But ultimately, the judgment was yours as to the --

A The final determination was ours.

Q By "yours," I mean the bank's.

A Right.

Q Not yours personally.

A Right.

Q All right.

MR. BICKS: Will you mark this as Plaintiffs' Exhibit 712 for identification, a memo dated December 31, 1969.

(Document as above described, marked Plaintiffs' Exhibit 712 for identification, this date.)

BY MR. BICKS:

Q Mr. Lusk, I would like to question you now about the subject of redating, when you first heard about them, what the bank did about them, and there are four or five memoranda involved and I will that is the one I recall I can't be sure.

Q. And you refreshed your recollection by recourse to a time record of yours kept in the ordinary course of business?

A Yes.

Q Did you charge the time involved in the telephone call that you received?

A Probably .1. I don't recall.

Q To what client did you charge?

A To the Pension Fund.

Q Now, would you tell us, to the best of your recollection, what Mr. Thompson said to you and you said to him that brought you your first awareness of this interest.

A He told me that they were looking into a possible private placement with Topper. That he was aware that we were counsel and that Glover Johnson was a director and that he said that, I am not quoting him now, I just remember the substance, that he would take great comfort in the fact that we would act as their watchdog in this investment.

And I told -- that is the thrust of what he said to me.

Q What did you say to him?

* * * *

do you remember, to your knowledge, that Mr. Johnson had such contacts with them?

A No.

Q You learned about those contacts, to the extent that you learned about them at all, with a conversation with Ramseur; is that right?

A I believe so.

Q Did you upon learning of those contacts in your conversation with Ramseur, regard those contacts by Mr. Johnson with your client as in any respect presenting a problem of protocol?

MR. BICKS: Objection to form. I don't know what protocol means in this context.

A I was concerned as to whether they were done on behalf of White & Case, or on behalf of Topper as a director. And I didn't want them to be misunderstood. And that is one of the reasons why even -- when I said I didn't recall Thompson telling me about it, I don't recall him not saying it either. He may have told me about it at that conversation because I was concerned about the fact of Glover's role when I talked to Thompson.

And that is why I emphasized he couldn't look to us because I didn't think it was appropriate for a law firm to be recommending an investment to a client.

* * * *

conversation.

I believe you indicated that you attempted simply to state the substance of that conversation?

A That is correct.

Q Do you recall now as we sit here what words Mr. Thompson used and what words you used?

A I am pretty sure he used either the term watchdog or a synonym for that.

Q What did you understand that to mean?

A I understood that he was taking -- he wanted to take comfort from the fact that we were counsel for Topper and that we would keep him advised even after the investment as to how things were going at Topper.

Q Did he say that to you in any way?

A No, but I was -- that is the way I interpreted it and he used the word like watchdog which indicated continued surveillance.

Q You further testified that Mr. Ramseur told you about an inquiry he received from Nelson about Topper?

Your answer is yes?

A Yes.

Q With regard to your recollection of what Mr. Ramseur told you, Mr. Craco showed you certain testimony by Mr. Nelson, I believe.

business with Topper."

Do you recall discussing that with Mr. Thompson?

A I do not.

Q Did you understand or inquire why those licensees -- why any such licensees would refuse to do business with Topper?

A No, but this would be covered, I think, in our trade checks with Zayre, Penney, people of that sort. Both of which companies we had close relationships with. We had much better than average checks.

Q Did you think that either of those companies would be a licensee within the meaning of this sentence?

A No.

Q Did you have reason to believe that they would know about the relationships between these licensees and Topper?

A I would assume that a toy buyer for a large store would know things of this sort, yes.

Q Do you know whether the question was ever put to either of those trade people --

A No, I do not.

Q -- about this sentence?

Did you ask Mr. Thompson to investigate further the indication in this sentence that some licensees refused to do business with Topper?

MR. BICKS: I believe he has indicated that he never discussed it with Thompson. Am I wrong?

MS. BAMFORD: Those two sentences are not necessarily mutually exclusive.

A This was Thompson's area to dig these things out and I didn't say, do this, do that, the other, except check with major important people.

Q I refer you to the second line of that third paragraph, specifically to the statement by the product development manager of Louis Marx, that the toy business is even worse than the garment business?

A Yes.

Q What meaning did that statement have to you?

A It meant that it was an extremely competitive business.

Q Did you discuss that subject with Mr. Thompson?

A Yes. Well, we talked about the toy business as a place to invest money.

MR. BICKS: By that subject you mean whether it was a competitive business, right?

* * * *

Waldman?

A I did.

Q When did you read that memorandum?

A I read the memorandum Monday, I believe. He talked with Waldman on Friday, he wrote the memorandum on Monday. He had talked to Waldman at my suggestion or rather talked to the bank at my suggestion. Walt Jeffers was the fellow who covered U. S. Steel and I said get in touch with Jeffers and find out who is the man in the bank covering Topper and get a report from that man about Topper.

Q Did you know that Citibank had loans outstanding to Topper when you made that suggestion?

A We knew that they were the principal bank of the company and that's why I suggested that he check with the Citibank.

✓

Q Principal bank in what regard, as a depository?

A They are the lead bank.

Q Lead lending bank or --

A Lending and deposit and the primary bank relationship. When you talk to a company, you say who is your bank. They give you two or three. Who is the lead bank.

Q How did you know that Citibank was the lead bank?

A We asked or Thompson asked and I asked Thompson.

Q I refer you now to Citibank Exhibit No. 2, which is the September 2, 1971 memorandum to the committee on finance.

A What we call a decision memo.

Q Yes.

This memorandum indicates in the second paragraph on the first page, below "Recommendation" that Princeton University is considering a one million investment.

A Yes.

Q When did you learn that Princeton University would not participate in the financing?

A I would have to guess. Probably a week later.

Q How did you learn that?

A Well, I'm chairman of the finance committee of Princeton. We have an investment counsel, John W. Bristol & Company, and as a matter of procedure, I feel it is my -- do you mind if I expand on this a little bit?

Q No, go ahead.

A I feel it is my duty as chairman to suggest to Princeton various private placements that the Pension

* * * *

A Then I politely, I guess, hope, the company has had problems back in the middle sixties with sales on consignment, has this problem been surmounted or has it been corrected? Once burned, twice shy.

Q Go on.

A And I was assured by Orenstein and the other two, I think, that it was. In the course of which they discussed the computer controls of inventory receivables, et al.

Another point we discussed was the high rate paid to the Ford Credit Company which in our business, a high rate is something you are conscious of. They explained it as a matter of policy that Ford is now going for the rate rather than the previous policy. My feeling was that this rate perhaps was another approach to investment whereas we want conversion.

Q Pardon me.

Who was it that told you about Ford's present policy of going for a high rate, do you recall?

A It That may have been my timing was ~~may be~~ wrong. H.
That may have been Mr. Waldman on August 30th and I could be wrong in that. You know we are dealing three and a half years away.

Q I am trying to confine your discussion at this

* * * *

* * * *

The fourth, that it had a very strong -- investment banking relationship with people who had money and were on the board and finally was there going to be a homogeneous group of lenders.

In other words, we didn't want individuals who had tax problems and so forth in this package of lenders. They had to be homogeneous, tax free funds or universities or what have you.

And that was the substance of that meeting.

Q You indicated earlier that you asked Mr. Downs or that Mr. Downs indicated to you that Manufacturers Hanover had had no bad experience with Topper.

If I am using the wrong words, correct me. Could you expand on that?

A I would put it the other way. They had a favorable experience. They thought well of Topper.

Q Did you ask the question of Downs or did he volunteer the reference to Manufacturers?

A This was asked at the time. Whether Thompson asked it or I asked it, I don't know. This question came up at the time, as I recall.

Q Did Mr. Downs state that the relationship had been favorable or was this your conclusion based on his description of the relationship?

A As I recall, he stated the relationship had been favorable, but of course he hasn't been there for a year or so.

To the best of his knowledge, at the meeting, I got the impression that everything was fine with Manufacturers Hanover.

Q Did he indicate any specific basis for his statement that the relationship had been favorable?

A No, except he was a banking officer and should have known. Whether he was on that account or not, I don't know.

Q Did he indicate that Manufacturers Hanover felt that Topper was a good credit risk?

A I don't think that question came up. The question that came up, as I recall, was that the Manufacturers Hanover opinion of Topper as a credit was favorable.

Q Was the question put to Mr. Downs as to Manufacturers Hanover's opinion of Topper as a credit risk?

MR. BICKS: I think she's asking were the words "credit risk" used.

A I can't tell you.

Q Do you recall whether you asked Mr. Downs --

* * * *

in many cases and the risks are that the products will become unpopular and lacking in popularity and the company must come up with new ones.

Q Did you have that understanding before you approved the decision memorandum on Topper?

A That's a characteristic of the toy business that we undertood, yes. We thought that Topper had then solved the problem or had it under control, if you will.

Q I refer you now to the third from the last sentence in the third full paragraph, to the phrase, "reasonably good credit" specifically, do you see it on my page underlined in red?

A Correct.

Q Did you agree with that statement by Mr. Thompson?

A Yes.

Q Did you understand what the basis was for Mr. Thompson's statement that he concluded that Topper had reasonably good credit?

A Certainly. This was based on what we learned from Mr. Waldman and what we learned from the underwriters. It seemed as though the company was held in high regard.

Q What do you understand the phrase "good credit" to mean as it is used here?

A Good credit is a relative term. Good credit of General Motors is different than good credit of Topper. But let's say the prospects are good that you will get your money back.

Q Do you know whether any specific question with regard to Topper's credit was ever put to Waldman by Mr. Thompson?

A Yes, it was all in the August 30th memorandum.

Q Apart from that memorandum, do you have any knowledge as to whether Mr. Waldman was ever asked --

A Mr. Waldman stated.

Q -- whether Topper had good credit?

A On January 4, Waldman said that I did say Topper's credit was good. That's a matter on one of your exhibits, if my recollection is correct.

Q Do you recall whether Hayden Stone was ever asked by any person at the Pension Fund whether Topper had good credit?

A I can't vouch for what Thompson said. Hayden Stone had their own money in it and their profit sharing funds in it and their customers in it. So they didn't -- at that time anyhow, we thought that this was evidence of good faith and good credit.

Q I refer you now to a memorandum dated February

* * * *

A To the best of my knowledge, I never even knew that he had approached the fund. He approached Thompson and Thompson turned it down and I do not recall that Thompson ever even discussed it with me.

Q Did you know Mr. Johnson personally?

A Never saw him.

Q Did you know anyone else at White & Case?

A I know a great many of the people. We use them extensively.

Q I refer you to a document dated February 22, 1973 which has been marked for identification as Citibank Exhibit No. 23 and ask whether you read that document on or about the date it bears?

A Yes, I did.

Q I refer you to the bottom paragraph on the first page, to the statement referring to the arrangement -- "arrangement whereby we paid FNCB for custodial investment services and regularly consult with the bank's senior investment officers."

A Correct.

Q Will you describe the regular consultation as you understand that reference to be?

A We have a meeting about three or four times a year with their senior people including Leif Olsen, the economist, and the head of the Pension Division, the head of the Investment Division, Egbert, and we go over the outlook of business, the outlook for investments, what they are doing and they have been very helpful over the years. This has been going on for 15 years, I guess. In each case Jeffers is the fellow that calls up and says isn't this the time or another meeting and we get a time that suits everybody and have a meeting and still do.

MR. BICKS: That the --

A I said we have been doing it for a long time and still do, period.

MR. BICKS: Did you mean that to fully describe the extent of advisory services by City?

THE WITNESS: We have used them in other connections extensively. I am talking about these periodic meetings. Do you want the rest of it?

MR. BICKS: They may not?

MS. BAMFORD: I was about to get to that.

MR. BICKS: I'm sorry.

THE WITNESS: This is the extent of the regular periodic meetings, period. Now...

BY MS. BAMFORD:

Q Will you describe any other discussions you had with the bank regarding investments on behalf of the fund?

A We have had a number over twenty years. For example, we wanted to do some tanker financing -- this is all private -- we didn't know the ropes. We went to Carl Wedel who is the head of the Citibank's tanker loan division. He led us by the hand through this thing and helped tremendously. Later on Bob Graham and I suppose we did 35, 40 million dollars of such financing and it was all based on their help. We made a loan to a subsidiary of Kerr-McGee which is Kermac Nuclear Fuels and in that case Bob Hoguet who was one of the senior vice presidents, I think of the bank helped us in setting up that loan. We used them. We had a loan to Drew Chemical and Citibank, that was one of their customers and they helped us a lot in this connection.

In this case it was Howard Miller. There were a number of oil investments we had made. There was a royalty out in California by the name of Ventura which the then vice president Charlie Dodson helped us with, there were two other investments. One was Goliad which was a Canadian oil investment we made. Dora Roberts was an oil payment down in Texas and a whole series of these things.

In addition to these we would upon occasion call up and say do you know anything about Mr. Jones who is president of the Rat Trap Manufacturing Company or something of that sort, and get a credit check.

~~These others were~~ They were expert help ~~and~~ [illegible] very valuable because they have a big specialized department, we don't.

Q With respect to these contacts which you made on the private tanker financing, the loan to the subsidiary of Kerr-McGee, the loan to Drew Chemical, the oil investments and the like, did you consult Citibank for assistance in carrying out the procedural aspects of the investment as distinct from assistance in recommending whether you should engage in the investment?

A I would say that the procedure was more important in the case of tanker loans, but the other -- in the other case we wanted guidance as far as the credit was concerned.

For instance, specifically in the case of Kerr-McGee, we wanted to know whether this was in their opinion the sort of thing [illegible] -- and I think, as I recall, and this was some years ago, Citibank and First National of Chicago were the two banks lending to Kermac Nuclear Fuels. This was a new venture to produce uranium ore.

Q Did you call the bank regarding Kerr-McGee prior to making your decision whether to invest in Kerr-McGee?

A Yes, we worked with them, as a guess a month or six weeks before we got the thing done.

Q You worked with whom?

A Hoguet, in this case, who is the man -- I think they have a special investments department or something of the sort in which oil and these various exotic types of or offbeat, if you will, investments occur.

Q What did this man at the bank do on your behalf?

A We found out what the bank was doing and then usually we would take -- excuse me, the bank was a bank and was lending money. We were interested in lending money and getting an equity kicker.

Do you follow me?

Q Yes.

A And so we had to be -- we had a different type of money than the bank did and so we got a lot of help from the bank in determining how credit worthy and what the prospectsof the company were. They usually hired an engineer to study the situation.

Q The bank hired an engineer?

A Yes, in an oil thing this is standard operating procedure.

Q The bank didn't hire an engineer for you but had already hired one for itself when you inquired?

A Yes. We felt we had a friend at court. They were in the thing and we were in on a different basis with a different type of money, but we were dealing with something that we were employing for this type of help.

Q Did the bank make any investigations into any of these issuers separate from investigations which it was making for its own purposes?

A I don't recall think -- I can't recall any, put it that way.

Q With respect to Kerr-McGee, for example, was the bank's assistance to you primarily that of giving you information which it had already compiled?

A This was ten, twelve years ago. I would say it was.

Q Do you recall whether Citibank ever performed any work on behalf of the fund in its capacity as a custodial bank under the 1950 agreement?

A Sure. They were custodian --

Q Excuse me. Apart from work which the bank was performing for its own purposes? Do you understand the question?

A No, I don't.

MS. BAMFORD: Why don't you read the whole thing.

(Record read.)

MR. BICKS: Could you rephrase that? I believe that a range of services were performed under that agreement as your question implies, custodial as well as investment.

BY MS. BAMFORD:

Q With respect to these requests which you made of the bank with respect to specific financings which you had either decided to participate in or were contemplating participation in, do you recall whether the bank ever in its assistance to you performed any investigation of the issuer apart from its own investigations for its own purposes?

A No.

May I ask you a question?

(Discussion off the record.)

A The answer is not to my knowledge.

Q That really was not my question. That's only part of it. The bank might know of a company in some regard but might not be able to answer your question without additional work and I am wondering whether the bank ever, apart from giving you an impromptu opinion or information which it had already compiled did homework in order to answer your question.

MR. BICKS: I'm not sure an impromptu opinion is fair, do you, here? I don't think there's been any opinion, the opinions were slipshod or impromptu or off the cuff.

MS. BAMFORD: Let him say so in answer to my question.

MR. BICKS: You are characterizing it.

MS. BAMFORD: Let him say no if that is not a correct characterization.

MR. BICKS: You are not asking to characterize. Why don't you rephrase it.

MS. BAMFORD: Do you want to reread the question, please.

(Question read.)

BY MS. BAMFORD:

Q Apart from the Topper investment.

A Let's give you an example. When we wanted to do tanker financing, Carl Wedel came over and spent several half days with us showing us how to do it. He knew how to do it, so I think the answer to your question in that case would be yes and obviously we had other banks doing this and we would use the bank that we thought as closest to the company we were interested in.

Q When did the loan transaction to the subsidiary of Kerr-McGee take place?

A Pure guess, 1960.

Q I see.

When did the private tanker financing to which you referred take place?

MR. BICKS: I think there were several of them that he referred to.

Q Were there several?

A There were two or three and I would guess -- let's see. This is a matter of record. You could dig it out. My guess is probably 1958 to 1961. In that area.

Q What was the approximate period covered by the oil investments on which the bank gave you some assistance?

A Probably 1955 to 1962 or 1963. Something in that area.

Q How about the loan to Drew Chemical, what would be the approximate date of that?

A I would guess it is probably 1964 or 1965. You could look it up. It's in our records.

Q What kinds of assistance did the bank give you with respect to the oil investments?

A Engineering estimates of the amount of oil remaining, type of demand for the type of oil, engineering well pressure and that sort of business. Recovery possibilities.

Q Do you know whether any of the kind of assistance which you have been describing since we first introduced Citibank Exhibit No. 23 has been given by Citibank since 1965?

A Well, we continue to have the meetings with them.

Q Apart from the meetings. I'm talking about the discussion we have had subsequent to.

A Topper is one.

Q Apart from Topper?

MR. BICKS: Are you interested in his recollection or the fact?

MS. BAMFORD: I'm interested in his recollection. I asked if he knew.

A There is one and I can't remember the name of the company. It was in the electronics field and it was a subsidiary of Phillips Lamp and you had loans to them and we were in it again on a mezzanine basis. The name escapes me at the moment. But that was in the late sixties.

Q Do you recall what assistance Citibank gave in that connection?

A Yes, the same thing. They were in the loan position and we had what we call mezzanine money with equity and it was a question of getting our ducks in a row and working for the same end, and it worked out.

Q Do you recall what specific questions were put to Citibank in that connection?

A We wanted to know what you were doing and what your feeling of the credit or the company's prospects were. This was a company that hadn't done as well as we had hoped.

Q Had you already made the investment at the time?

A We had already made the investment and whether we invested before we talked to City or after, I don't recall.

Q Do you recall whether you had made the loan to Drew Chemical before or after you talked to Citibank about it?

A That I don't know. Drew was brought to us by Lehman and we knew that Citibank had a loan and whether --

I assume we did but I can't be sure.

Q You assume you did what?

A Talk to them before we made it. These all can be verified. If you are asking my memory, why, I have given you the best I can.

Q I refer you to a document dated January 3rd, 1974 which has been --

A January 3rd?

Q Yes.

-- which has been identified as Defendant Hayden Stone Exhibit Thompson E and ask if you read the document on or about the date it bears?

A No, I didn't read this article. I had retired at April 30, 1973. This is new to me.

Q I refer you to a document which has been marked for identification as Citibank Exhibit 17 for identification and ask if you have seen that document before.

A No, this was written by I assume -- maybe I shouldn't guess. But it was not written by me nor was it -- 2/11/75? What is the date?

Q It doesn't appear to be dated.

Do you have any knowledge as to approximately when it would have been prepared?

He said these are the subjects I raised, these are the answers I got.

Q To the best of your recollection, what did he tell you about the subjects he raised?

A Just what he has written here.

Q Did you discuss with Mr. Thompson the refusal of Mr. Waldman to "commit himself outright as to whether the toy business is one in which we should commit funds"?

A When I read that, I said you have no business asking Waldman that question and I still say the same thing and I told Henry a couple of days ago I was going to say that. It's none of Waldman's business. He couldn't judge what our investment policies are. It was an irrelevant question.

Q My next question on this memorandum is whether there is anything that you learned of Mr. Thompson's dis-discussion with Mr. Waldman on the 27th of August that is not contained in this memorandum?

A No.

MR. BICKS: Wait a minute. I believe he has testified. I think Mrs. Bamford asked him about the various meetings he attended at Citibank.

MS. BAMFORD: He means at the time.

MR. GRIFFIN: I'm talking about August

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sulted Citibank with regard to actual or proposed investments in companies to which the bank had loans outstanding or had had loans outstanding.

You mentioned specifically Drew Chemical and an electronic subsidiary of Phillips Lamp.

A Right.

Q Do you recall whether the Citibank loan to Drew Chemical or the electronic subsidiary of Phillips Lamp was secured by any assets?

A I don't know.

Q Do you recall when the contact was made to the bank on either of those companies that the person at the fund who made that contact inquired as to whether the loan was secured?

A I didn't make the inquiry myself. This was done by one of my associates. That's why my memory is not as sharp.

Q Do you recall which associate made the inquiry regarding Drew Chemical?

A It was probably George Nelson.

Q And the Phillips Lamp subsidiary?

A And I think almost certainly it was John Van Deusen.

Q Do you recall whether the fund has ever asked the bank for any information about any other company for which the bank -- or has had loans outstanding?

A Sure. I was giving you examples. There were other cases of things we did. These are the ones that I thought about last night without any records but just came to mind.

Q Do you recall how many years ago any such contact would have been made?

A I gave you some dates this morning.

Q I am wondering if you can think of any others.

A I think we probably used them more in the 1955 to 1963 period than we used them later. We have used them from time to time right on through.

Q Do you recall any reason why you might have used them more in that earlier period?

A We were far less experienced. We had done many less of these things and it is a question of personalities. We knew the people very well in the special services department, such as Bob Hoquet and Charlie Dodson and so forth.

Q Did you have any contacts personally with any people at Citibank regarding Toppoer after the February 10th meeting with Mr. Garvin which you mentioned earlier?

A I had two meetings with Garvin. I went up and

Topper Corporation?

A Yes, Henry Thompson, who previously had worked for me, came to me with the papers on it and said that he had been looking at the deal, that he wanted to do it, and talked to me generally about it, asked for my advice.

I suggested that he check with the First National City Bank as to the management, whether the company had any special problems, the outlook. He told me that the First National City Bank was the lead bank.

I also said that I would check with White & Case because Glover Johnson who was a partner of White & Case, was a director of Topper.

Q Do you recall approximately when this conversation with Mr. Thompson took place?

A Well, I think it was in the summer of 1971. I couldn't say August, July, June.

Q Now, you say that Mr. Thompson brought you some papers?

A Yes.

Q Do you recall what they were?

A As I recollect, they were a memorandum that had been prepared by the Hayden Stone firm. I think he had had some conversations with them and with the management, he brought his notes and talked to me about it. But, the main document was the Hayden Stone memorandum.

Q Did you read that memorandum?

A Yes.

Q Do you recall approximately how long you spent reading it?

A I don't know, half an hour. I really don't know.

Q I am asking you to look at Exhibits 1 and 4 through 11, including 4-A.

A I have no recollection of that.

If I remember, the only thing I saw was a memorandum that was prepared by Hayden Stone outlining the deal. Basically, I did not go into depth. He came to me and said, "This looks like a good deal, what should I do, do you think we can get it by Harvey, how do you think I ought to approach Harvey?"

I didn't make any great effort to analyze the deal. Mr. Thompson is a highly competent security analyst in the private placement business. My tendency with someone like that is to give him his head. These guys have got to learn they have to do something, if necessary, make mistakes, and if a good guy comes here with a deal that he is sold about, subject to some checks, my tendency would be to approve it. So, I didn't do any detailed analysis of the deal at all.

Q Fine, sir.

I would note that you have looked at Exhibit 1 and indicated that you have not seen that, but you have not yet looked at Exhibits 4 through 11. I would ask you to quickly look through those.

MR. BICKS: Do you mean City Bank Exhibits 4 through 11?

MR. GRIFFIN: Yes.

MR. BICKS: May I show the witness what I think are 4 through 11, and why don't you check to see we are talking about the same one.

Have you ever seen City Bank Exhibit 4?

THE WITNESS: No.

MR. BICKS: What is the next one?

MR. GRIFFIN: Why don't we let him go through it and then he can put on the record which ones he has seen.

MR. BICKS: What was the next one you wanted me to show him?

MR. GRIFFIN: 4-A.

MR. BICKS: I have City Bank Exhibit 5, which is 4-A?

MR. GRIFFIN: Telephone conversation with

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recollect is that there was some memorandum that Hayden Stone had prepared. It was a presentation.

Q Now, you have just looked at some documents and indicated you don't recall ever seeing them. Does that go for any time or just for the first talk?

A As far as I know I haven't seen them.

Q At all?

A At all.

Q Now, during your conversation with Mr. Thompson, this first conversation that we are talking about, was that held in your office?

A Yes.

Q He came to your office?

A Yes.

Q Was anyone else present?

A No.

Q Was this at 71 Broadway?

A Yes.

Q Did Mr. Thompson indicate to you any of the factors that he considered to be positive, or promising in the Topper proposed investment?

A Well, he thought the outlook for the toy business was good, we had no investments in that field. He thought they had done a good job with the Sesame Street line.

A lot of people made a lot of money in Mattel. He thought this might be an attractive situation.

Q Did he discuss with you the management of Topper?

A Yes. He said that as far as he knew they were good, and he had made some checks and people thought very well of them.

Q Did he indicate to you what checks he had made?

A I think the only one that I remember specifically that he said was that he had talked to Zayre, we had in investment in that.

Q Other than indicating that the check had been favorable, did he indicate what Zayre had said?

A No.

I really don't remember. I assume he said something, said that they were competent, something like that.

Q Now, he gave you a memorandum that Hayden Stone had prepared; is that correct?

A I think so.

Q Did he say anything about Hayden Stone with regard to Topper?

A He didn't say anything about Hayden Stone, he didn't really have to. I knew Hayden Stone as well as he did.

Q He did not indicate -- did he indicate any relationship between Hayden Stone and Topper?

A Well, they were trying to place the deal for Topper, so they presumably were acting as investment backers for Topper.

Q Did Mr. Thompson mention to you during this conversation that he had called a Mr. Schwartz at Burnham & Company?

A I don't think so.

Q He did not?

A I don't think so.

Q Did Mr. Thompson indicate that he had looked into the question of the integrity of Topper's management?

A Well, he had looked into it to some extent. This is why I suggested that he talk to the First National City, and said that I would also talk to White & Case.

Q Did he indicate what he had done thus far to look into the question of the integrity of Topper's management?

A Outside of the fact that he said he had made some checks, he did not indicate in detail what he had done up to that point.

Q Did he indicate whether the checks were favorable or unfavorable?

A They obviously were favorable otherwise he wouldn't be thinking about recommending the deal.

Q Was it you that brought up the possibility of calling First National City Bank?

A Yes.

Q Did Mr. Thompson inform you that the First National City Bank was a prime lender to Topper?

A Yes.

Q He did that before you mentioned calling the bank?

A Yes, that is why I suggested he call them.

Q Did you give him the name of anyone at the First National City Bank to contact?

A Yes, I mentioned the name of Henry Jeffers.

Q What was the first name, sir?

A Henry.

I should perhaps elaborate on that. We had done similar dealings with the First National City Bank when they were prime lenders. I had done that. We did a deal on Drew Chemical, we did a deal on something called DeLaval Turbine, and in both of those cases the First National City Bank was the prime lender. In both of those cases we worked, we did subordinated debt financing that was subordinated to the First National City Bank loans. In both of these cases we worked closely, very closely with the First National City. They kept us fully informed during the whole procedure. Both loans worked out very well.

We had a particularly close relationship with the First National City Bank. They, in effect, had an investment council arrangement with us. We met with them frequently. We felt free to call upon them for all kinds of things. In my opinion, we dealt with them in perfect confidence.

They even brought deals to us, one of which we did, one which they had a banking connection.

Q During your first conversation with Mr. Thompson did you learn that the First National City Bank's loan to Topper was a secured loan?

A I don't remember, but the other financing we had done was subordinated, and generally when you do debt with warrants or junior convertibles, this kind of thing where you get a sizeable potential kicker, you are subordinated to the bank loan. So, I am sure that I knew that our loan would be subordinated with the First National City Bank.

Whether I knew it was secured or not, I don't recollect.

Q Did you gain any understanding from Mr. Thompson as to what specific kinds of information the bank received from Topper about Topper's business and financial condition?

A No. I assume they received whatever the bank should receive in these circumstances.

Q I believe you told Mr. Thompson that you would check with White & Case; is that correct?

A Yes.

Q Did you do so?

A Yes.

Q Who did you call?

A I called John J. McNally, who is a partner of White & Case, and I asked him two things really, I asked him about the -- I put two approaches with him, I asked him if he would check with Glover Johnson and ask Mr. Johnson what he thought about the management of Topper and their integrity, whether there were any special problems in Topper that we should know about, and how he felt about the general outlook for the company.

I also asked Mr. McNally for his private opinion of Mr. Johnson's judgment.

Apropos, there is a reason why I could do this, White & Case were the lawyers who did all the private placement work, all the real estate, at least a lot of the real estate work for the United States Steel Pension Fund. We had a very long relationship. Mr. McNally and I had worked together for 12 years, been all through all kinds of situations, knew each other very well.

Q What did Mr. McNally respond to your two requests?

A Well, in due course he called me back and said that Mr. Johnson thought the management was good and capable and honest, and that he thought the outlook was good. He didn't know of any special problems.

Mr. McNally also came back and said that he thought Mr. Johnson was a capable, experienced lawyer-businessman, and he would have confidence in his judgment.

Q At the time you made the call to Mr. McNally, were you aware that on some previous occasion Mr. Johnson had phoned the Pension Fund and suggested an investment in a Topper public offering?

A I would assume so. I think that was one reason why I asked for Mr. McNally's private opinion.

Q Did Mr. Thompson ever indicate to you that he had called Mr. McNally, or spoken to Mr. McNally on the phone?

A I don't recollect that he did. I said I would call McNally, and I reported back to Thompson.

He may have called him, I don't know, but I

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couple of days certainly.

Q How long after you called Mr. McNally did he return your call?

A I would say within -- certainly within a week, I would say it is less.

Q Thereupon, that is --

A I reported back to Mr. Thompson.

Q You did report back to Mr. Thompson?

A Yes.

Q Did Mr. Thompson ever indicate to you that he had spoken to Glover Johnson on the phone during approximately the same period?

A No, I don't think so. I don't remember that he did.

Q During this first conversation with Mr. Thompson, did he indicate to you any of the negatives of the proposed Topper deal that he felt Mr. Mole or anyone else may object to?

A The nature of the business is negative, it is a speculative business. It is not the type of company that the Pension Fund would normally invest a large amount of its assets. In a fund as large as the United States Steel Pension Fund, you are entitled to a few speculations, and this would be in that category.

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Q Mr. Nelson, did I infer properly from your testimony that at one time or another when you were with the Pension Fund you were engaged in investigating proposed private placements?

A Yes.

Q Is that yes?

A Yes, sir.

Q Did you as a general practice in investigating such private placements call lead banks?

A Yes, particularly if a lead bank was someone we were closely affiliated with.

Q In other words, you have called banks before?

A Sure.

When you are investigating private placements basically if you know anyone on the board, or you can have an access to anyone of the board, you have an access to a bank, you use it.

Q Now, based on that experience when you told Mr. Thompson to call First National City Bank would you tell me specifically as you can what exact points you expected Mr. Thompson to find out from the bank?

A Well, I think I wanted him to find out about their opinion of the management and its integrity, their knowledge of any special problems that the company might have,

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Obolsky Deposition

SANFORD OBOLSKY, having been previously duly sworn, resumed the stand and testified further as follows:

EXAMINATION (Continued)

BY MR. GREINER:

Q Mr. Obolsky, during 197. what was your understanding of the rights of return that Topper granted to its customers, if any?

A I couldn't tell you exactly offhand. I just don't remember the years. In 1970, 1971. 1971 I know was the year after the problem year, I guess, right?

Q Well, in 1970 or 1971.

A Well, we had right to return defective merchandise, period.

Q Did customers have the right under any circumstances to return non-defective merchandise?

A No.

Q What was your understanding of the rights of exchange, if any, that Topper granted to its customers in 1971?

A Could you repeat that, please.

(Question read.)

A You are asking me years again. I don't recall exactly. There were times when they had the right to exchange a doll for a doll when they were overstocked in a certain particular doll and they wanted to diversify their stock or a particular car where they wanted to diversify the car.

But I don't remember which year you are referring to. In 1971 I don't honestly remember what the story was.

Q Was the type of exchange that you have just referred to, was that known as balancing of inventory at Topper?

A That's correct.

Q In 1970 or 1971, if you can't place it specifically --

A Right.

Q -- did you have an understanding that Topper did not grant any other rights of exchange at the time that customers entered into agreements with Topper to purchase merchandise?

A That's the only one that I know of.

Q When did it come to your attention that Topper granted exchange rights in 1971, if at any time it did so?

A Again, I can't say. Memos were written to the effect, if I can recall, that they had the right of balancing. But I don't recall which year.

Q Did it come to your attention then in late 1971, or early 1972, that Topper had written certain letters to its customers in late 1970 granting them rights to exchange merchandise?

A Yes.

Q And do you recall the circumstances under which that came to your attention?

A Well, I believe it was January 1972, and Mr. Rose brought the letters to my attention.

Q Now, prior to that time did you have any knowledge other than about balancing of inventory that Topper had granted exchange rights to its customers?

A No.

Q Did this come as a surprise to you when Mr. Rose brought this matter to your attention in January of 1972?

A Yes.

Q Were you aware of the fact that Topper prepared projections in 1970 and 1971?

A Yes.

Q Do you know how those projections were prepared?

A No, I do not.

Q Did you have any role in the preparation of the

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the May receivables had not been paid?

A Not that I know of.

Q Did you discuss that subject with anyone at Topper?

A Not that I can recall.

Q Did you discuss with Mr. Rose the question of taking steps to collect some of these receivables?

A Specifically I can't say. But we did discuss collections of receivables all the time.

Q Well, specifically with respect to the customers who had not paid the May receivables.

A I can't remember a specific instance, no.

Q Do you recall discussing with Mr. Rose during the summer of 1971 the question of obtaining collections from customers?

A No.

Q Did Mr. Rose ask you to call customers during the summer of 1971 to obtain collections from them?

A Not that I can recall.

Q Did Mr. Rose ever ask you to call customers during 1971 to obtain collections?

A Yes.

Q Do you recall any of the specifics of that request during 1971, or those requests?

A Well, all I can recall is I had spoken on many occasions to Kresge, to Vornado, to Korvette, requesting payment of invoices. But specifically I can't tell you when or why or how.

Q Are you saying that you called Kresge, Vornado and Korvette on various occasions?

A Yes.

Q Did you call any other customers that you recall?

A Not offhand.

Q Can you recall generally without reference to specific customers that you did call other customers?

A On rare occasions. I spoke mostly to the bigger accounts, which were Kresge, Vornado, Korvette's, mainly because I -- I don't know, over the years I spoke to these people and I had someone to talk to there. But that's really the only reason why. We had a credit manager. He spoke to most of the accounts.

Q Who was that?

A Preston Maas, M-a-s-s. I am not sure, it is M-a-a-s.

MR. FITZGERALD: It is M-a-a-s.

Q Do you know whether Mr. Rose called up any accounts to obtain collections?

A I don't know.

Q Do you know whether Mr. Orenstein called up accounts?

A No.

Q Do you know anyone else that called accounts to obtain collections from them?

A No.

Q Did Mr. Maas have principal responsibility for calling up the accounts?

A Yes, he was the credit manager and he called most of the accounts. Also he wrote to them regarding invoices, et cetera.

Q Did you ever have any discussions with Mr. Maas about what he learned --

MR. GREINER: Strike that.

Q Did you ever have any discussions with Mr. Maas about his calls with regard to collections during 1971?

A I am sure I did but I can't remember specifically.

Q Were you ever informed by customers that you called during 1971 that they were not going to pay any invoices to Topper because they had not sold merchandise and that there was an arrangement that they did not have to pay until they sold the merchandise?

MR. FITZGERALD: Objection as to form, but go ahead and answer the question.

A No.

Q Did any of the customers who you called ever indicate to you that they had an exchange right?

A No.

Q Did Mr. Maas indicate to you on any occasion that customers had told him that they were not going to pay until they had sold the merchandise?

A Not that I recall.

Q During 1971 did you learn from any source at Topper that customers were taking the position that they were not going to pay invoices until they had sold the merchandise?

A No.

Q And was that contrary to what you understood to be the obligation of customers of Topper?

MR. FITZGERALD: Objection. I don't understand the question. Was what contrary?

Q Was it contrary to your understanding of the arrangements which Topper made with its customers that such customers had a right not to pay for the merchandise until they had actually sold it?

A They had no such right. I mean --

Q Do you know of any instance where a customer had such a right?

A No.

Q Did there come a time where you learned that the receivables due in August under the December 1970 extended dating sales had not been paid in large part?

A I don't remember. I don't remember.

Q Do you recall whether Mr. Rose asked you to review the detailed trial balance to determine that fact?

A No, I don't.

Q Do you recall any discussions with anyone at Topper about the fact that the August receivables had not been paid?

A No.

Q Do you recall discussing with anyone at Topper whether the Spring 1971 program was a success?

A No.

Q Did anyone at Topper indicate to you that during the summer of 1971 they felt the spring 1971 program was not a success?

MR. FITZGERALD: I think again, Steve, you are getting things mixed up.

Is it the spring 1971 program --

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A Not that I can recall.

Q Did you discuss the results of the reprojection with anyone?

A No.

Q Did you know during 1970 about Topper's practice of redating?

A I am sorry, I didn't understand that.

(Record read.)

A Yes.

Q What was your understanding of the meaning of the term "redating"?

A Well, as I recall, in the beginning of a year, at Toy Fair, when a customer had invoices that were unapid because of financial problems or problems of moving the merchandise, in order for them to get an additional order for the following year they would give them some help by redating a portion of his inventory.

Q Did you ever learn that an invoice which was redated at Toy Fair 1970, and which was therefore to become due later in 1970, was redated a second time?

MR. FITZGERALD: Objection to form.

MR. DAILEY: What's the basis of that objection? You say as to form.

MR. FITZGERALD: Yes. I don't know that's a fact. I don't hink --

MR. DAILEY: That's a question of foundation.

MR. FITZGERALD: Well, I object as to form as far as I am concerned. I have no problem with that. I know -- I am not too concerned with -- I know what you are getting at, if you will ask the question a little more directly I will have no problems.

MR. GREINER: I think the question as asked can be answered.

MR. FITZGERALD: I object as to form as far as I am concerned.

A I don't recall that fact.

Q Did anyone at Topper ever mention to you that that had happened?

A No.

Q Did anyone at Topper mention to you that invoices had been redated on more than one occasion at any time?

A You mean like were they redated twice?

Q Yes.

A Not that I remember.

Q Is it your testimony that to the best of your recollection you were never aware that such an instance had occurred?

A To the best of my recollection, no, it never did occur.

Q Did it ever come to your attention during 1970 or 1971 that a customer had been granted redating until he sold the merchandise?

A I am sorry, you will have to repeat that, I didn't hear the end.

(Question read.)

A No.

Q Is it your best recollection that that never occurred at Topper?

A That's right.

Q Did you learn at any time during 1970 or 1971 the amount of the invoices which had been redated at Toy Fair 1970 which had been paid by the customers at some point thereafter?

A Not that I recall.

Q Did you ever learn during 1970 or 1971 that any substantial portion of the redated invoices were not paid in accordance with their redated terms?

A No, I don't remember that being a fact, no.

Q Was it your understanding that the invoices which

Q To the best of your knowledge, that statement was true?

A I don't remember the figure, but I assume it was.

Q You have seen this memorandum before today, haven't you?

A Yes.

Q Did you review the memorandum before it was circulated to potential offerees?

A Yes.

Q Do you have any reason to believe that statement is not correct?

A No.

Q I don't mean to make a mystery of it, but do you have any reason to believe that is not so, the 11 million?

A No.

Q You were starting to explain when the customers of Topper, it was intended that they sell the "Dawn" dolls. At what time of the year was it intended that customers of Topper sell the "Dawn" dolls?

A Well, it was --

Q Under the spring '71 program?

A Yes, it was to cover the first, let's say, half of the year or so, and in some cases more, because they had an incentive to buy it at a low price.

Q Because the point was, as I understood the purpose, that it was to encourage and promote sales by your customers in the early part of the year, when before that time most toys were not sold; is that so?

A Before that time most of our toys?

Q Yes, were not sold.

A Topper toys?

Q Prior to the spring '71 program, did not most of Topper's toy sales take place at particular times of the year?

A Yes.

Q Was one purpose of the spring '71 program to even out the sales throughout the year as a whole?

A Yes.

Q Is that fair?

A Yes.

Q Could you elaborate a bit on the time of the year that customers of Topper were supposed to have sold Dawn Dolls under the program?

A Well, I couldn't pinpoint the time, but obviously we wanted to give them an opportunity to sell in the early part of the year as well as later on.

Q Right. And was it intended that more would be sold in one month rather than the other or pretty much

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APPEARANCES: (Continued)

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* * *

HENRY ORENSTEIN, having been previously duly sworn, resumed the stand and testified further as follows:

EXAMINATION (Continued)

BY MR. BICKS:

Q Mr. Orenstein, for convenient reference in my questioning of you today, I shall refer to the purchase of Topper convertible notes of September 28, 1971 by plaintiffs in this proceeding and others as the private placement. Do you understand the reference?

A Yes.

Q My first question is, who originated the idea for the private placement?

A Do you mean which person or which organization?

Q If you can remember the person, fine.

A I think that it -- it originated with Topper but I am not sure who suggested it first.

Q Do you recall when you first heard of the idea?

A No.

Q Approximately?

A No.

Q Do you know whether it was in 1970, for example?

A I think so, but I am not sure.

Q Can you recall approximately when was the first occasion the idea was discussed, to your knowledge, with Hayden Stone, the idea of a private placement?

A No.

Q Was that in 1970, do you think?

A I am not sure.

Q I see.

A It was either in '70 or '71.

Q Early '71, would it have been?

A I think so, but I am not sure.

Q Did you meet with officials of Citibank at

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A Again, I don't believe that I remember the exact dates about the meetings.

Q Right.

A I know a meeting like this, or meetings like this, took place because general subjects like this were discussed during the meetings that we have held.

Q Right.

A I don't remember any specific points here, but the overall substance, I do remember that these points were discussed.

Q Does that memorandum treat the substance of the points discussed to the extent that you presently recall in an accurate fashion?

A In other words, on these dates?

Q Well, on or about that time.

A I would say that to the best of my recollection, there were meetings that discussed these general subjects about that time, and I couldn't tell you whether it was July or August or June, or something like that, but there were meetings like this, the subjects in that nature were discussed.

The Ford Motor credit loan was discussed sometime during that general period. The debentures were discussed. Our general financial situation, earnings, et cetera, were discussed at most of these meetings.

So I assumed they were referred to in some form during these meetings because that was the purpose of the meetings with the banks.

We may have mentioned SESAME STREET because there were others interested in the line. There was some discussions about slow collections, but I couldn't even indicate whether this subject was at that particular meeting or even in that general area, or some other time.

And that's to the best of my recollection what --

Q When you say there was discussion of Topper's financings, does that mean Topper's need for money from the bank?

A Yes.

Q Do you want to confer with your counsel?

MR. BUTLER: No, go ahead.

MR. RICKS: I am sorry to push, but I really would like to finish this up.

On the other hand, Mr. Butler, any time you want to confer, go ahead and say so.

MR. BUTLER: No.

Q I believe I asked you if you can recall the substance of what you, Mr. Rose or Mr. Downes said at the meetings there referred to. I didn't ask you if you could

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Q Is it likely that you would have gone to the bank to tell them about this new subordinated money prior to this memorandum, prior to the meeting reflected in this memorandum?

A To the meeting where, with the bank?

Q This December 4 memorandum reads:

> "They are arranging to bring in $5 million of new subordinated money."

Does that indicate to you that it was in this meeting which you attended that Citibank was told of the arrangement for the first time?

A I'm not sure. It appears that way from this memo, that this is perhaps the first time that we told them about this new subordinated money, but I'm not sure that this precludes some mention of it before.

Q Is it likely or unlikely that the bank would have made a suggestion as to how to obtain $5 million, in what form, from the investment community? Was the bank, in other words, involved in that kind of discussion with you?

A Well, most of the time those things were discussed among ourselves and with Hayden Stone, but we would discuss it with the banks and tell them or maybe on some occasions they would make comments, but I would say basically the thrust of how to get the money came from sources other than t bank.

Q Do you recollect in this particular case whether Citibank made any comment when it was told that you were going to get $5 million of new subordinated money?

A They always liked the idea, so I imagine the comment whenever we were talking about bringing new money in was favorable.

Q Did they ever tell you why they liked the idea of your getting money elsewhere?

A Because they like to have as much under them, in other words money that would be junior to theirs, to make their investment safe.

Q I take it when you told them about this particular offering, you expected a favorable reaction then?

A From whom?

MR. FITZGERALD: Objection to form. I don't understand the question.

Q Did you expect a favorable reaction when you informed Citibank that you were intending to obtain $5 million in subordinated money?

A Yes.

Q There is a reference in this memorandum to a cleanup of the bank loan. In paragraph 2, the same

* * * *

Do you recollection, having attended at this meeting, whether this was the first time that Topper people informed Citibank of their plans to institute a public offering the following April?

MR. FITZGERALD: Objection.

I wish you could phrase it in terms of whether this is the first time he had informed First National City Bank of whatever you asked.

A I don't remember it was the first time or not.

Q Do you recollect whose idea it was to have a public issue of Topper stock?

A This was all done, as I explained before, on the basis of first Jack Rose will give us the numbers and then we would make a projection of sales and then a cash flow will develop and we would know, based on the increase of business that we would have, whether the money was sufficient or not and it wasn't, then we would be talking about how to get the money.

Now, who initiated any particular idea, I don't know, but usually these matters were covered by and between myself, David Downs and Jack Rose on the Topper side. Almost exclusively by the three of us.

Q Who outside Topper?

A Outside Topper?

Q If anyone.

A From the time, Hayden Stone was part of it, and we would talk to Hayden Stone.

Q Do you recollect what time that was?

A No, not at all.

Q Can you tell me whether when you first became president of Topper in 1966 it was your intention at that time that some day Topper would go public, if possible?

A No.

Q Do you have any recollection as to when you first started thinking about going public?

A I couldn't pinpoint the date.

Q Can you say approximately during 1969 or approximately some other period?

A Let me just make sure.

When was the first public offering?

Q The first public offering took place, as I understand it, in June of 1970, although you had attempted to have one the previous year, and for reasons which I believe the record indicates, that wasn't feasible.

A We attempted during '69? I don't remember.

Q There are documents, which I believe have been admitted herein, which shows discussions during the previous year.

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A He was our R&D man. In fact, I remember that because he was particularly proud about this thing here and we were talking about making a line of cosmetics that would be for little girls, you know, like doll-type, and he said why not really go in and, you know -- at that time the kids were very rebellious. This was the time of Kent. So he thought there might be an opportunity to market a real line of cosmetics with a marketing thrust of "This is just made for you."

Q I show you a document which purports to be a memorandum by Morty Siegel of Citibank, dated May 8, 1970, which I mark for identification as Citibank Exhibit No. 30.

(Memo by Morty Siegel of Citibank, dated May 9, 1970, was marked as Citibank Exhibit No. 30, for identification, as of this date.)

Q I refer you to the first page, to the paragraph numbered 3, which refers to a "private offering for $2 million which would take a few weeks," and I ask you whose idea that private offering was?

A What date is that?

Q The date of the memorandum is May 8, 1970.

A Well, again, I can't pinpoint a particular idea because there were numerous offerings -- a number of offerings and a number of sales of stock, private and different forms of financing, and I can't pinpoint who said let's do this. It usually was handled internally by David Downs, Jack Rose and myself, and we depended to a very large extent on advice from White & Case as our lawyers, Arthur Young as our accountants, and Hayden Stone as our finance people.

Q Do you recollect whether this offering ever went through, which would have been scheduled for somewhere around June of 1970?

A Was that a public offering?

Q It says private offering, so this would not be the public offering that did in fact take place in June of 1970.

A I don't remember now the exact date. I would have to --

Q Do you recollect that a private offering was planned to take place at about the same time as this offering, perhaps for the possible reason that the public offering might not have raised as much money as you wanted?

MR. FITZGERALD: Objection to form.

Answer the question, if you can.

A I recall there were two or three private

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MS. BAMFORD: This is the 1970 [illegible] offering.

MR. FITZGERALD: The public one?

MS. BAMFORD: Yes.

A Whose idea it was? I think you asked me that. The answer is that I can't recall who said it first. It was Jack Rose, David Downs or myself, working with Hayden Stone, with the lawyers, with the accountants, and probably it originated either from us or probably one of us and then when we talked to Hayden Stone, maybe somebody from them said something.

Q My question now is not why did you decide to have a public offering, but, rather, why did you decide that when the proceeds came in you would use them to pay down whatever your bank loan was at the time.

A Because the bank was loaning us the money and we felt at the time that we need more money. Now, whether it was because the bank asked us or we did it on our own, I don't remember now. But usually the pattern was that the bank always told us that you can have so much and no more and if you need some more, we will only go so far, you know, and then we decided we need some money to finance the company's business.

Q My question was -- and I don't believe I heard an

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answer to it yet, so I will repeat it -- why was it that when the proceeds came in from the public stock offering, you decided not to use them immediately for any purpose other than to pay the bank loan down?

In other words, why did you not apply them directly to business needs rather than pay down the bank loan and then perhaps apply --

A Because if I'm not mistaken, that was our arrangement with the banks. We were on a sort of total controlled basis. We never got any money. They got all the money. Even from customers we never got the money. So all the money went to them and then they would give us whatever we needed.

Q Did you use proceeds of the various public and private offerings to pay down the bank loans rather than immediately to do other things with those monies in order to save interest?

A No. I'm just trying to explain to you that the offerings and public placements and all that, all were a result of the company needing additional money because of its growth, which was considerable.

But the routine, Jack Rose would know more about it, was that when any money came in, we didn't have any right to use that money. We had to give it to the bank and then the bank would give us the money that we needed.

Q Why did you have to give it to the bank?

A I think that was the arrangement we had with them. In other words, when we got a check, it never went to us.

Q Are you talking now about customer collections?

A Customer collections.

The other monies, I think it was pretty much the same thing. In other words, when we got the money, we would give it to the bank.

Q My question is, why?

A I think that was the understanding or the arrangement. They were pretty much in total control of our cash flow.

Q Had you promised in the case of each public and private offering that you would give the money to the bank if it would increase your line beforehand?

A On some occasions we may have.

Q Would that then have been the reason for your feeling that you had to give that money over to the bank when it came in?

A I really think the way it worked -- and I'm not an accountant, so I don't remember 100 percent -- but Jack Rose will tell you. I think the way it worked, with any

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A No.

Q --did so?

A No.

Q You've testified previously that it was Topper's intention to go unsecured?

A Right.

Q Was it in furtherance of that intention that the Ford loan was obtained?

A I think it was.

Q Was it in furtherance of that intention that the private placement, which closed on September 28th, 1971, took place?

A I believe it was.

Q When did Topper first acquire a goal of going unsecured?

A That was our fondest dream from the time we started dealing on a secured basis.

Q And that time was when Topper first was incorporated in 1966?

A That's right.

Q What were the reasons that you wanted to go unsecured?

A Well, it would have given us much more time to conduct our business on items which would be profitable

Q How would you have more freedom to buy merchandise, would that be because you had your own money?

A No; because if we had unsecured money, that means our depth of availability of money would be greater, and we could place orders earlier, negotiate better, et cetera.

Q Was a lower interest rate another reason for going unsecured?

A Absolutely.

Q Did undercapitalization have anything to do with your desire to go unsecured?

A It was really all connected, and the reasons are very apparent, I think, from many points of view.

Q Are there any other reasons you can think of why it was felt that an unsecured lending relationship would be preferable to what you had?

A Let's see, now. We listed the fact that there would be less time spent, better buying, better R&D, more investment, less interest. I would say they were probably the main reasons. I am sure there were others.

Q Can you explain what you mean by better R&D?

A We would have more money to invest in research and development and get better items, better toys.

Q You've testified herein that the decision to have the private placement was made by Topper. By whom at Topper was that decision made?

A Mostly these decisions were made by three people. We were in almost constant discussion about all these major financing and general company policy problems. There was myself, David Downs and Jack Ross.

Q Which of those three persons would have made the ultimate decision to go ahead and seek a private placement?

A Well, since I was the Chief Executive Officer, the ultimate responsibility was mine.

Q Do you recollect, in the case of the private placement, which took place in September of 1971, which of the three of you initiated the discussions of a private placement?

A No. I would like to add to the previous. However, I don't recall a single occasion where I went against the advice of, let's say, Jack and David Downs, Jack Rose and David Downs.

Q Who determined the amount of money which would be sought in the private placement which closed in September of 1971?

A Well, we talked about it with the underwriters, among ourselves, with the directors--

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Q On those occasions, did the people who came from Ford spend an entire day at Topper?

A A number of days.

Q Were those persons given office space at Topper for the review of documents?

A I think so. They were very meticulous. They really went into great, great detail, and they wanted to know a lot of detail.

Q Do you recall where they were located at Topper during their review of documents?

A I think someplace on the second floor.

Q Do you recall whether those persons were shown the general correspondence file of Topper?

A Again, I don't recall exactly the documentation they were shown, but it was very extensive, and very possibly they were shown the general correspondence.

Q What floor were the general correspondence files maintained on?

A I don't know.

Q What floor were the monthly aging reports maintained on?

A Probably on the second, but I'm not sure.

Q Do you recall what room?

A No.

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was happening in the market.

Q How did you go about checking, yourself?

MR. FITZGERALD: Objection. He has already testified to that.

A I just explained it to you.

MR. FITZGERALD: He also testified the last time what his system of tracking was and he itemized all of the things.

Q Did you use test stores in the course of your checking personally?

MR. FITZGERALD: Objection. He testified that he did use test stores. He testified to the amount and certain other facts.

MRS. BAMFORD: All right.

Q You have testified that the persons who were considering investment in the private placement were free to check "anything they liked".

A Yes.

Q Did you indicate to any persons who were contemplating investment in that private placement of 1971, that they were free to check, literally, any Topper record that they wanted?

A I am sure I have, because that was our completely open policy. Since I personally have not had the education to be able to do some of these things which require accounting or legal or expertise, I always had a policy of getting the best legal advice, the best accounting advice. Everything was open, and we always mentioned, whether it was the bank, the accountants, Ford, anybody, that they are free to come in, or people from the private placement, that they are free to come in and see.

In fact, we almost urged them to do that.

Q Was it customary to make all Topper records available to participants in any offering of Topper?

A We offered them what there was. Everything was open. We would take them to any place in the company and tell them that they could see anything and do anything and send in the people, whatever they wanted. Some of them did it to a larger extent than others. Some of them took advantage of that company position to a greater extent than others.

Q Who did you personally make that offer of record availability to in terms of participants in the 1971 private placement?

A Well, I mentioned it to Henry Thompson, I mentioned it to-- I don't think I mentioned it to Mr. Mallet, because we had a meeting and I don't think that particular subject was discussed. But it was just policy. At any point, anybody, they always knew, could go in and look at anything.

Q Did you mention the availability of all Topper records to Mr. Hieronymus of Connecticut Mutual?

A No, I don't think so.

Q You testified that some persons took greater advantage of your offer than others?

A Right.

Q Which persons took advantage of that offer?

A I thought Ford was the one that did the most careful analysis of what we had. They took a long time, many months. There were a number of people coming in, and they were getting all kinds of records. They were getting documentation showing how the sales were, how the money was coming in and all that, a very, very, very careful study.

Q What records, if any, did Mr. Thompson request of Topper?

A He didn't request them of me. I think he requested them of Jack Fose or David Downs.

Q Were you aware of any specific documents that were requested?

A No, not specifically, except I think he wanted

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coming year?

A Which years did you mention?

Q 1969, 1970 and 1971. Did City Bank ever threaten to cancel or not to renew the loan?

A Yes.

Q Your answer is yes, City Bank did threaten?

A Yes, right.

Q When did such threat or threats take place?

A In the first year.

Q My question referred to the years 1969, 1970 and 1971. Did any such threat occur in any of those years?

A I'm sorry. '69, '70, '71? We started doing business with them in '67. No, I'm sorry. I don't recall that in '69, '70, '71.

Q Who made the ultimate decisions at Topper regarding the number of items of any particular toy category to produce?

A Well, it was probably myself, but with a lot of help from Fred Pierce, particularly on the smaller items.

Q Who made the ultimate decisions at Topper regarding which customers to sell to and in what amounts?

A Well, that was primarily Fred Pierce.

Q Did anyone at City Bank ever suggest to you that you should sell more or less to any particular customer?

A No. I don't remember that.

Q Did anyone at City Bank ever suggest to you that you should produce more or less of any particular toy category?

A No.

Q Did City Bank ever condition continuation of its loan on achieving any specified amount of gross sales?

MRS. BAMFORD: Do you want to read back that question?

A I understand it. I don't think they have.

Q Did City Bank ever condition continuation of the loan on achieving a specified net worth?

A Well, I don't know how to answer that, because that would be tied in, to an extent, with cash flow. I think what they were mostly concerned with was collateral and cash flow. In later years, I mean, the ones you mentioned, '69, '70 and '71, I don't remember ever a situation where they would say, hey, you better do this or we cut you off.

On the other hand, very often we would call up and they wouldn't give us the money. So, in effect, they were doing-- you know, they were cutting us off.

Q Did City Bank exert any direct influence in any way over your production or sales?

A No.

Q Were you aware of an attempt by certain officers at Topper to obtain customers' signatures on Arthur Young confirmations in connection with its 1970 audit of Topper?

A 1970? You mean replying to the audit request? Yes, we discussed it at a previous deposition or two.

Q Were you aware of any instructions by Schwartz or any other person at Topper to the effect that customers should sign because the confirmations were not legal documents?

A I don't remember that, but I do remember that Arthur Young made it a condition that we recieve a certain percentage of customers' confirmations which sometimes was very difficult because some of them just wouldn't do it as a matter of policy.

Q Do you recall what the percent was?

A I'm not sure, but somehow a figure of eighty percent, seventy-five percent, or something like this, in that area, sticks in my mind. Now, I don't remember

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substance of the conversations.

Q At the time you signed this statement in March of 1973, at that time you believed this to be true, is that correct?

A Everything contained in this statement was to the best of my knowledge at the time.

Q And it was true at the time?

A Yes, well--

Q Right. Is that correct?

A Obviously.

Q The statement also states that the Arthur Young accountants inquired of you as to whether Topper had given any concessions to customers and you stated with respect to that: "I didn't report to them the existence of the exchange letters or the oral exchange agreements because I honestly did not believe that they would amount to anything dollarwise in the long run."

Do you see that?

A Yes.

Q Was it in fact your belief in the spring of 1971, that the exchange agreements would not amount to anything dollarwise in the long run?

A Yes.

Q Is it a fact that for that reason when you were asked by Arthur Young accountants as to whether Topper had given any concessions to customers, you did not report to them the existence of the exchange letters?

A Yes,

Q Now, I would also like to show you, Mr. Pierce, paragraph 4 of the statement which has been marked as Exhibit 1, the bottom of the page there is a paragraph dealing with instructions to your secretary with respect to where the exchange letters should be kept.

Do you see that?

A Yes.

Q Is it a fact as stated here that Edie Spressler and Carmela Yearwood are your secretaries and Alex Hughes' secretary, were instructed not to make extra copies of these letters nor to send copies to others in the office.

A

Q Is it a fact as stated here that the letters were not sent to the general files where orders and contracts with customers were kept?

A Yes, sir.

Q Is it also a fact as stated here"as an added precaution Henry Orenstein, Alex Hughes and I called the customers who got the exchange letters in December 1970 and asked them not to disclose the existence of the letters to anyone"?

A Yes, those instructions are all relevant to the sentence that you previously had me read into the record, concerning the fact that we didn't want to write more letters to more customers.

Q Mr. Pierce, I would like to direct your attention to the other statement which has been marked as Exhibit 3 and particularly to the document which is attached to it marked as Exhibit A.

A Yes.

Q Could you just briefly state for the record what that document is?

A That's a list of customers from whom the Finance Department had requested help from us in getting confirmations.

Q There are initials next to the names of these customers?

A Yes.

Q Are those initials the initials of various employees of Topper?

A Yes.

Q Can you tell us how this list was prepared or how it came about that this list was prepared?

A Yes. Jack Rose in a meeting with Henry Orenstein and myself--and I am quoting the statement distinctly--"explained that we needed to get as many confirmations as possible because Arthur Young wouldn't recognize the spring program income without a significant number of confirmations. It was agreed that various persons from Topper would contact the spring program examiners to encourage them to send in their confirmations."

Q And the list was prepared to reflect--with the initials--the names of the particular Topper employee who is assigned to call each particular customer?

A That is correct.

Q After that list was prepared and those assignments were given out, I take it that those people did in fact make those calls to the customers asking them to send in the confirmation returns?

A Yes.

Q Directing your attention to the paragraph which appears at the bottom of that page, is it a fact that when those calls were made, you at Topper, began to hear from many of the customers that they were concerned that if they send back their confirmation, they might in some way jeopardize the right they had to exchange merchandise dollar for dollar pursuant to their agreements with Topper?

A Yes.

Q Is it a fact that those who raised this point included most, if not all, of the customers who had received written exchange letters?

A Yes.

Q After receiving those inquiries or hearing of them from others, did you check with anybody?

A Yes.

Q Who?

A I checked with Julie Schwartz.

Q Can you tell us what Mr. Schwartz said?

MR. FISKE: Withdrawn.

Q Let me just direct you to page 2 of this statement and ask you whether or not when you checked with Mr. Schwartz, he said that the confirmations had no legal significance and that if the customers referred to the exchange rights in their confirmation, it would create complications?

A Yes.

Q Did Mr. Schwartz tell you what you should say to the customers?

A He indicated we should advise the customers to send in the confirmations without reference to the exchange agreements, as it indicates in the paragraph you're referring to. He also indicated before doing so, I should wait to give him the opportunity to check.

Q Did you wait to give him that opportunity?

A Yes.

Q Did you hear from him again?

A Yes.

Q What did he say when you talked to him again?

A He called me and informed me that the confirmations were not legal documents and had no legal standing. He indicated the customers should sign and return the confirmations confirming the amount of goods they had received and the invoice amount for which they had been billed.

Q Did he tell you that the customers should be advised of--

A The customers were advised that any deductions or adjustments were irrelevant.

Q In other words, not to refer to any deductions or adjustments when they sent the confirmation back?

A Yes.

Q After this conversation with Mr. Schwartz, did you and the others contact the customers again that had raised this question?

A Yes.

Q What did you say to those customers?

A Just what I just read into the record.

Q In other words, you told them that they should send in their confirmations without reference to the exchange rights, without reference to any deductions or adjustments?

A That's right.

Q You yourself had such conversations with customers?

A Yes.

(Pause.)

Q Mr. Pierce, attached to Exhibit 3 is another list which has been marked as Exhibit B. That has some handwriting on it. Can you tell us what that is? I think this is a reference to it in the last paragraph, incidentally.

A I had previously identified the handwriting as that of Sandy Obolsky.

Q Can you tell us what this handwritten list is, Mr. Obolsky prepared?

A I'm not sure.

Q Incidentally, when you told the customers that following your conversation with Mr. Schwartz that they should send in their confirmations without reference to the exchange rights, did you also tell them they need not be concerned that they would lose their right of exchange?

A Yes.

MR. FISKE: That's all I have, thank you.

MR. CRACO: Off the record.

(Discussion off the record.)

EXAMINATION BY MR. CRACO:

Q Mr. Pierce, directing your attention to the fourth paragraph of Arthur Young Exhibit 1 for identification, concerning the original conception of the spring program, I believe your testimony was to the effect that Mr. Orenstein was the one who conceived the direct shipment feature which was the difference between that spring program and previous spring programs. Is that a fair statement of your testimony?

A Yes.

Q Did you have any conversations with Mr. Orenstein concerning that idea?

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your recollection of how it came about that this list was prepared in the first place?

A Yes.

Q How did it first come to your attention that the confirmations with respect to the Topper '71 spring program were slow in being returned by the customers?

A I had a conversation with Mr. Rose.

Q With Mr. Rose?

A Yes.

Q Did Mr. Rose at a meeting at which you and Orenstein were present have anything to say about the desirability of stimulating these confirmations to Arthur Young?

A Yes.

Q I would like you to tell us to the best of your memory what Mr. Rose said to the meeting on that subject.

A Well, Jack had brought the problem to Henry. Henry called me in with several of the other people represented on here.

Q Do you remember what people were present at the meeting?

A Mr. Benson and Mr. Hughes, I think.

Q Okay. What was said?

A He indicated that as usual our customers were dragging their feet about sending confirmations. A lot of our customers historically never sent in confirmations of their account. They couldn't be bothered with them. They just threw them away. Most of the people we called in prior years threw them away and said, "Send me another copy." Jack said because of the size of our spring program, Arthur Young was interested in getting confirmation of these large amounts that were outstanding.

Jack said we should get a list and see who should call whom. It's an attachment to this and that's where the meeting determined who would call which persons, as indicated by the initials referred to above.

Q The last sentence of that paragraph indicates that, "Various persons referred to by initials on the list were assigned the task of calling various customers to encourage them to send in their confirmation."

Who made those assignments?

A Well, the assignments came out of a meeting, if there was a dispute, Mr. Orenstein made it, otherwise people volunteered, saying, "I'll call him and I'll call him," et cetera, going down the list.

Q You memorialized those assignments with the initials you placed on the left hand side of the list?

A For follow-up purposes, right.

Q Were you assigned the job of following up?

A Well, I was assigned the obligation, if you will, of calling any of the people not represented at the meeting and telling them to follow up with the people.

Most of the people that were at the meeting worked for me.

Q Was the upshot of the meeting that these calls would be made and you would kind of see to it that the calls were made and coordinate the effort, is that right?

A As far as the people who worked for me.

MR. CRACO: I think it might be useful if we would mark as Exhibit CC, the list itself, if you don't mind.

Why don't we deem it marked in the record and we will mark it at a later time.

(List deemed marked Defendant Hayden Stone-Pierce Exhibit CC for identification, as of this date.)

Q Thereafter, were the calls made to the customers indicated by the persons whose initials are next to their respective customers' names?

A I believe so.

Q Did the persons on this list who worked for you, report back to you the substance of the conversations they had with the various customers?

A To some degree, I don't remember exactly whether they covered every customer, but that was their instructions.

Q Look at the first sentence of the last paragraph on page 1 of Exhibit 3:

> "After the list was prepared, the person assigned the task of contacting the customers made the contacts and immediately we began to hear from many of the customers concerned that if they sent back their confirmations, they might in some way jeopardize the right they had to exchange merchandise dollar for dollar pursuant to written or oral agreements with Topper."

I take it from its appearance in this memorandum, that statement represents your best recollection of what happened and what was reported after these calls were made.

A Yes.

Q What's the basis of your knowledge of that fact?

A Well, from the salesmen under my control calling me and telling me that. At least one case from a customer telling me that I called myself.

Q Which customer is that?

A Globe Wholesale.

Q I'm sorry.

A Globe Wholesale.

Q Who did you speak to at Globe Wholesale?

A Ron Soren.

Q What did he say to you?

A Just what I indicated there, that if he in fact signed the confirmation for the amount of dollars involved--you'll note he is on the list twice, for Globe Wholesale and L & N Globe Company. And that together they represented quite a substantial amount of dollars.

Q If he signed the confirmation, what?

A He felt the way they were written, it would endanger his right to exchange merchandise.

Q Did he say why?

A If he confirmed the receivables as they were without the possibility of exchange, somebody would make him pay the receivables as they were without giving him his right of exchange.

Q What did you say?

A I said he had a good point and I would point out what the story was and get back to him. I, in the meantime, had gotten several other phone calls from salesmen who had gotten the same reaction. By no means all of them.

Q What did you do?

A I called Julie Schwartz. I tried to call Jack Rose and couldn't get him and that's why I called Julie Schwartz.

Q What was Schwartz' position?

A President of Finance.

Q And Rose's position?

A Senior President of Finance.

Q Schwartz worked for Rose and reported to Rose?

A Yes.

Q You had a conversation with Schwartz at that time?

A Yes.

Q What did you say to Schwartz and he to you?

A I transmitted what I just said to him and he indicated that the confirmation had no legal significance, which I took to mean they weren't enforceable to collect the moneys involved.

Q The first time you talked to Mr. Schwartz and I understand from your memorandum there were at at least two occasions. Did you say to him and he to you essentially what is reflected on the first page of Exhibit 2?

A Yes.

Q Did he say specifically that if the customers referred to the exchange rights in their confirmations, it would create complications, in words or substance?

A In words or substance, I'm not sure it was specifically complications.

Q Did he indicate what he meant by that reference?

A As I recall, he indicated to me that the confirmations were simple confirmations by the customers that they had in fact taken title to the merchandise and that they had been invoiced for it.

Q What complications did he refer to, if you know?

A He didn't. He just answered the question that way. It was just to have them sign it without referring to any exchange privileges or deductions, as a matter of fact.

Q Did he indicate to you that he wished to check on the answer he had given you?

A Yes.

Q Did he indicate with whom he wished to check?

A No.

Q Did you know with whom he wished to check?

A Well, my normal assumptions in all cases with Mr. Schwartz was that the one he was going to check with was Mr. Rose.

Q Did he get back to you after having checked?

A Yes, that's what he said he had done.

Q Did he say with whom he had checked?

A No.

Q And was the information he gave you thereafter substantiating the information contained in the second paragraph on page 2 of Exhibit 3?

A Yes.

Q Did he give you any information that you presently recall?

A No.

Q Do you recall anything you said to him on that occasion?

A Only that I would proceed with the phone calls and that's what my people should tell the customers if they brought up the subject.

Q Thereafter did you have, personally, conversations with customers in which you communicated to them certain instructions regarding the confirmations?

A Yes, at least one.

Q Who is that?

A Ron Soren, I called him back.

Q What did you say to him?

A I reiterated what Mr. Schwartz had told me and he said okay. He said "Send me copies," because he in fact had thrown them away and I think he subsequent to that sent them in.

Q Did you indicate to Mr. Soren in words or substance that his exchange privilege remained intact notwithstanding his confirmation?

A Yes.

Q Did you make any reference to any letter confirming his exchange privilege which had been previously sent to him in the course of remarking on that?

A No, I don't think so.

Q I direct your attention to the last sentence of the third paragraph of page 2 of Exhibit 3, which says: "As I said to one customer, he shouldn't be concerned about his exchange right because he had a letter from us." To what customer did you make this statement?

A One of the ones that I called that had a letter. I don't remember which one. I might be able to tell you.

Q Take a look at Exhibit CC for identification and the customers which have your initials next to them and tell me whether that refreshes your recollection as to the customer to whom you made that statement.

A I think it was Davis. The first customer on the list.

Q After you had completed these telephone conversations and received reports from others who had also done so, did you have any further conversations with Orenstein or Rose concerning the completion of that task?

A I think so. I think at one point Jack advised both Henry and I that we had enough and we could stop calling people.

Q Do you recall when that was? I take it that Jack is Jack Rose?

A It was obviously some time after January 16th of 1971.

Q Let me ask you whether the customers who are on the list which is Exhibit CC could be characterized as large customers or medium size customers or small customers or a range of customers with regard to the spring program?

A Range.

Q A range?

A Yes.

Q Did it include large customers?

A Yes.

Q Who are some of the large customers?

A Blatt Distributing.

Q Anyone else?

A Shepher Distributing, Times Square Stores, American Leisure Products.

Q Any others that you would characterize as large?

A E. J. Korvette, Vornado, Globe Wholesale, Northern Specialties, Leonard Wasserman, Interstate Stores.

Q Do you know whether Mr. Rose made any calls himself?

A Yes.

Q And are those indicated by JJR in the left hand margin?

A Yes.

Q And did it come to your attention that he had in fact made calls to the customers so indicated?

A He said he did.

Q Do you know whether Mr. Rose communicated to them certain instructions with respect to the treatment of the confirmations and the exchange rights?

A I don't know that as a matter of fact. He volunteered to call Blatt Distributing. He said he had to call them for some other reason.

Q Do you know whether he got any of the customers' reaction that you have described about exchange privileges and gave them the information which you gave for example, to Soren?

A I don't know.

Q Do you know whether Mr. Orenstein made any of these calls himself?

A Yes, he did.

Q Are those calls indicated by the initials HO in the margin next to customers' names?

A Yes, they are.

Q Did it come to your attention that he in fact had made such calls?

A He indicated he had.

Q Do you know whether he got any of the customer reaction with regard to exchange privileges that you have previously described?

* * * *

A The year 1971 was a classic disaster for the entire toy industry. Fall television, due to several extraneous factors, including active consumers' groups, severely hurt all of the major television manufacturers. I don't know one of the major television manufacturers that wasn't overprojected that year. It was like Christmas never came. People went back to basics and didn't buy the TV merchandise. That is relative. Obviously they bought some. But they didn't buy anything like everyone projected.

There are public figures on all the public companies. Every major television manufacturer had over-projections.

Q Do you have any concept of what the real reason was that everyone in the industry was overprojected?

A They were waiting for a normal Christmas season and it never came that year.

Q And why was that?

A I wish I knew the answer.

Q Do you have any reason to believe that the decision to have a public offering or a private placement during the year 1971 by Topper would have resulted from the projections prepared at the beginning of that year?

A Would you read that back?

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A Not that I recall.

MR. [illegible]: Would you read back that question?

(Question and answer read by the reporter.)

Q Any customers ever indicate to you prior to the end of September, 1971, that they didn't want to make any more purchases of Topper merchandise because they had merchandise still in the NYSCo. warehouse?

A After Thanksgiving.

Q But prior to the end of September, 1971?

A I don't remember any specifically. It's possible.

Q When did you first become aware that the September re-projections for 1971 were certain not to be met?

A After Thanksgiving.

Q How did that come about that you became aware of that fact?

A Well, in the toy industry, after Thanksgiving, normally the Monday after Thanksgiving specifically, on television merchandise you normally get an enormous influx of orders, plus if you are a fairly large company that has field people you have people in the stores over that weekend counting sales as to what happened.

And on the basis of the information we'd already had as to what had happened in the stores, we

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should have had enormous over-the-counter sales and they didn't happen. The customers were staying away in droves, not just on our merchandise but on other television merchandise.

Q How did --

A By December 7 or December 8, one or the other, I don't remember, I called for a distributor inventory and key retailers inventories and had people go out and take inventories and phone them in and that's when the mess started at that point. It was after the receipt of those inventories that we realized that merchandise wasn't selling over the counter to the extent that we had expected.

Q Prior to the Thanksgiving weekend, what percentage of retailers' sales usually took place for the entire year?

A It varies widely, between different kinds of retailers. Some people have relatively flat sales, relatively, There are published figures on it that you could get. I really don't have them offhand. On a television item, over the counter, it is not unusual to sell 65, 70 percent of it after Thanksgiving.

Q On the merchandise Topper sold to its customers, did you have any idea of what portion of those -- of that merchandise you expected to move at retail prior to the

Thanksgiving weekend?

A No. As of Thanksgiving, we still felt that the sales over the counter justified our projections at that point. We were still producing merchandise after Thanksgiving, which to a large extent wasn't sold. We thought it was going to be.

Q Let me ask you this. Was it general experience that you had at Topper that less than 50 percent of the retail sales of Topper merchandise occured prior to the Thanksgiving weekend?

A Yes.

Q Was it less than 25 percent?

A Somewhere between 25 and 50, I would guess.

Q And is it your testimony that at least 50 percent of the sales at retail would take place between Thanksgiving weekend and Christmas?

A Yes.

Q Did you receive reports between September and the end of the Thanksgiving weekend of the type you've testified about which indicated what the retail sales were during that period?

A Yes.

Q And based upon those reports, were you satisfied that retail sales were doing well?

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A Up until November, yes.

Q And specifically as to Dawn, were you satisfied just prior to the Thanksgiving weekend that there was no problem as to consumer demand for that product during 1971?

A We had set up special promotional ads around the Thanksgiving weekend, and either the first weekend in December for specific promotions. So I was satisfied the rest of the promotions we had planned were going to sell the merchandise. And they didn't.

Q Precisely what was the first indication that you received after the Thanksgiving weekend that merchandise was not selling retail up to your expectations?

A Monday morning the reports from the people that had been in the stores, because at that time of year they called in reports. And the merchandise -- what happened was television merchandise in general, Topper's and other people's, where normally you got a sales curve in November of relatively flat demand and after Thanksgiving it goes like that. Unfortunately, it stayed like this.

MR. LAWLER: He can't get that down.

THE WITNESS: Sorry about that.

Normally the sales demand for television toys accelerates greatly after Thanksgiving and it stayed flat in that particular zone. I've never seen another season like it. I hope I never do.

Q Did you ever estimate what the sales were at retail of Topper products during 1971?

A I left Topper the end of January, 1972. No.

Q Do you have any indication what the total sales of Topper's merchandise retail was in 1971?

A No. I don't even know what Topper's sales were in 1971. I don't believe the figures were even published, as a matter of fact.

Q Now, when you became aware after the Thanksgiving weekend that the sales were flat during that period of time --

MR. GREINER: Strike that.

Q Let me be sure I understand your testimony.

Your understanding immediately after the Thanksgiving weekend that sales were flat was based upon the written reports from the field about which you previously testified?

A No.

Q Tell me exactly --

A I just testified a few minutes ago that at that time of the year we went to telephone reports, speed.

Q And how many reports did you receive at that time upon which you based the conclusion?

A I have no idea. It was a reasonable geographic sample.

Q Were the field people calling you to tell you that it was a disaster?

A Regional sales managers were calling me. The field people were calling their particular supervisors. It worked its way up very quickly.

Q Was the end of the Thanksgiving weekend always a time at Topper in which you devoted special efforts to see how goods were selling at retail?

A Yes.

Q Do you recall approximately how much under your expectations the reports indicated that retail sales were immediately after the Thanksgiving weekend?

A Only that the retail sales were a small fraction of what we had expected them to be.

Q Now, did you discuss the problem of retail sales with Mr. Orenstein at that time, immediately after the Thanksgiving weekend?

A Yes.

Q And did you discuss it with Mr. Rose?

A I don't believe so at that point.

Q Did you personally call customers to find out what was going on?

A Yes.

Q And did you receive an explanation from the customers as to what was happening?

A Not an explanation. They didn't know what was happening other than the fact that the sales weren't taking place.

Q Did they indicate to you that this was true for other toy manufacturers as well as Topper?

A Yes.

Q Now, when you discussed with Mr. Orenstein the problems after the Thanksgiving weekend, did you talk about the implications of the exchange privilege which you had granted customers?

A Not at that point.

Q When did you first talk to Mr. Orenstein about the implications of the exchange privilege?

A After we got the inventories that we had called for, about a week after that.

Q What was the substance of those discussions?

A Well, after the Monday after Thanksgiving, we still felt the kids are going to get toys for Christmas, maybe the weather is bad. We were looking for explanations. It never happened before. It was a unique situation.

We just thought people were going to wait a few more days, you know, before they made purchases, they were sitting back. And we logged the stores and everything all through the following week and still nothing happened. Stuff was selling but nowhere near what anybody expected.

After we took the inventories and found out how big a problem there was out in the field, that is when I discussed the implications with Mr. Orenstein.

Q And what did you say to Mr. Orenstein as best you can recollect, and what did he say to you about it?

A I showed him the figures and indicated that we had a severe problem as far as the amount of merchandise in the field and what we are going to do about it. At that point I was saying it was going to hurt our spring effort for 1972 because my people were out trying to sell a program for delivery beginning of 1972.

Q And did you — had you personally talked to customers who had indicated that they were going to exercise their exchange right at that point in time?

A I think so. The whole month, you know, during that month certainly people did indicate that.

Q Did you have discussions with Mr. Orenstein as to what merchandise you were going to use to exchange for the merchandise which hadn't sold?

A At that point Mr. Orenstein asked me to prepare a breakdown by customer of how serious the problem was, what we could do as far as exchange, if it wasn't possible to exchange it, what we should do about it, which I did.

Q Did you determine what the seriousness of the problem was at that time?

A I determined that there was no way it could all be exchanged. Went back to him with the outline of the amount of inventory involved, how much, you know, by customer as near as we could ascertain what the problem was at that point.

I believe he had a board of directors meetings, one of several that took place during that month, I think. And then came back and said that he'd been informed by Mr. Rose that we should settle the problems, as an interim step, that although we wouldn't make any money we wouldn't be in too bad a shape. This is in December of 1971, that we might not make any money that year but — because we were going to eat up all the profits in settling this thing. And Mr. Orenstein told me to go ahead and settle the problems with all these customers, and get them to settle their accounts and pay their receivables.

Q Did you have discussions with Mr. Rose at that

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Q (by Mr. Greiner) Mr. Pompea, did there come a time when you were approached with respect to making a loan to Topper Corporation?

A Yes.

Q When was that?

A To the best of my recollection initial contact was made by Mr. Joseph Arnstein and Mr. Allen Peters to Mr. Bernard Lavery sometime in late March or early April of 1971. I subsequently, at the direction of Mr. Lavery, had a telephone conversation with Mr. David Downs sometime in early April.

Q Who was Mr. Arnstein?

A Private citizen, to the best of my knowledge, acquainted with Mr. Allen Peters and also acquainted with some people then employed by the Ford Motor Credit Company.

Q Is that A-r-n-s-t-e-i-n?

A I don't know.

Q Who was Mr. Peters?

A Mr. Peters purported himself to be an investment banker, I had minimal contact with him throughout, an investment banker representing the Topper Corporation.

Q What is the source of your information that Mr. Arnstein and Mr. Peters contacted Mr. Lavery?

A Just my recollection of their physically being present in

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any procedure at Ford Motor Credit Company at any time during May of 1971 with regard to consultation by Mr. Lavery prior to issuance of the letter of intent by Ford Motor Credit Company?

A I wasn't aware that I had the authority to indicate the intent of the Ford Motor Credit Company to enter into a proposed loan without prior approval by my immediate superior at the time.

Q (by Mr. Greiner) The question is do you know whether Mr. Lavery was required to seek further approval?

A I don't believe so.

Q Can you tell us what factors entered into your decision and --- Strike that.

Did you suggest to Mr. Lavery that Ford send the letter of intent with respect to the Topper financing?

A I must have.

Q What factors entered into your determination to make that suggestion to Mr. Lavery ?

A Just a general decision that based on the information then available this looked like potentially a feasible commercia loan.

Q Was there anyone else at Ford prior to May 27, 1971, aside from Mr. Lavery, who was involved to any degree in evaluati

Topper Corporation?

A To the best of my recollection there was not.

Q Did you make any judgment in your own mind as to the Topper's credit worthiness?

A Again, based on the information then available it seemed to be primarily a feasible transaction.

Q Did you attempt to evaluate its credit worthiness?

A In a preliminary sense.

Q Can you elaborate in what sense you did?

A It was potentially not a company in bankruptcy at the time. In very general terms the earnings record was looked at, the various balance sheet ratios were looked at, and a general judgment was made as to the preliminary feasibility of investing further time and effort in pursuing this matter.

Q Where did you get the information relating to Topper's earnings record?

A My best recollection is that Standard-Poors and Moody's data was relied upon, which essentially is a compilation of publicly available material. The Red Herring.

Q That is the attached perspectis which is a part of Hayden Stone Exhibit Ford 2 for identification?

A Right. I believe the most recent annual report was available at that point.

Q Did you make the notations which appear on the perspectis, which is a part of Hayden Stone Exhibit Ford 2, some time prior to May 27th, 1971?

A It's difficult to answer that question. I could have made those notations over an extended period of time.

Q Did you review the perspectis prior to May 27th, 1971?

A My recollection is that I did.

Q Do you recall whether you asked any questions of Topper personnel that related to perspectis prior to May 27th, 1971?

A I don't believe I did prior to May 27th.

Q Was there any discussion with Mr. Downs about the possibility of Ford giving Topper an unsecured loan initially?

A Not to my recollection.

Q Prior to May 27th, did you do any checks with outside sources about Topper Corporation?

A Not to my recollection.

MR. BICKS: Other than the ones he's testified to? He's testified he looked at Moody's, which is an authority.

A Well, yes.

Q (by Mr. Greiner) Do you have any further recollection about conversations with persons at Ford or conversations with persons at Topper prior to May 27th, 1971?

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for conducting the credit evaluation and preparing the proposal wherein a basic credit decision would be set forth.

Q At the outset of the credit evaluation, did you have contact with Mr. Duncan, Mr. Finnen, and/or Mr. Ellis concerning Topper Corporation?

A I did.

Q Can you tell us when and the substance of the contact that you had with them during June of 1971?

A I don't recall the specific dates, etc., but the system would have dictated that I would have returned the executed letter of intent and submitted the same to the Credit Department along with any material I had developed or obtained on the basic transaction in question, which they would have used to initiate their investigation, and I assume I did that the first week in June sometime.

Q What materials did you turn over to them aside from the letter of intent?

A My vague recollection is the Red Herring Annual Report, the toy catalog, the letter, whatever interim statements I had picked up at that point.

Q When you referred to interim statements, are you referring to Topper's unaudited monthly financial statements?

A Yes.

Q Any other documents that you turned over to them?

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relate to the notion that Manufacturers might enter the credit as the lead lender, in effect, taking City Bank's place. I was introduced to the Manufacturers people by Dave Downs in New York. It was a fairly brief meeting, perhaps no longer than an hour, and the thrust of the meeting again was the notion that Manufacturers, which was just starting up an accounts receivable financing operation, might take on the Topper Account as its first secured receivables loan in this new department.

(Whereupon the preceding question was read back by the Court Reporter.)

Q (by Mr. Greiner) Who did you meet at Manufacturers Hanover?

A I was first introduced to Donald Baker, who was Senior Vice President in some capacity. Jim Linley (sic) was the Vice President, and a junior fellow there whose name I can't recall.

Q Was there anyone else from Ford that went to that meeting?

A Just myself.

Q Anyone else from Topper that went to that meeting?

A Just Dave Downs.

Q Do you recall what was said about Topper Corporation at the meeting?

A Mr. Downs was very optimistic about the future of the Company, attempted to convey that optimism to the people at

Manufacturers. We discussed in general terms the nature of the proposed Ford Financing. Manufacturers, as I recall, didn't indicate any interest or lack thereof in proceeding. It was just a get acquainted meeting, and ended on a fairly inconclusive basis.

Q Did anyone from Manufacturers Hanover say anything about Topper Corporation that you recall at that meeting?

A Not as I recall. The individuals involved in the new receivables lending activity was there and we discussed in general terms what they proposed to do in this lending area, but I don't recall ever specifically talking about the Topper situation.

Q Did Mr. Downs indicate why the possibility of Manufacturers Hanover taking over as lead bank was being considered?

A I recall that the people at Topper were frustrated by the detailed reporting requirements demanded by City Bank, and were anxious to develop a more fluid relationship where Dave Downs obviously had prior personal contact with banking people involved.

Q Did Mr. Downs indicate this to you or someone else at Topper?

A My recollection is that it was Dave Downs who mentioned those general points.

Q Did Mr. Downs indicate to you the nature of the documentation that Topper had to provide to City Bank?

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A Well, all I recall was the requirement that they generate receivables print outs frequently, and computorized receivables print outs.

Q As of the time of the meeting with Manufacturers Hanover, had you seen any of those materials?

A No. I don't recall seeing any prior to that.

Q Was there anything said by Manufacturers Hanover dispensing with the need for all of the documentation if they took over as lead bank?

A I don't recall that.

Q Do you have any other recollection of what took place at that meeting?

A No, other than it subsequently became apparent that Manufacturers had no interest in proceeding along the lines suggested by Mr. Downs.

Q When did that become apparent?

A I don't recall that ever being specifically stated. It just became apparent that City Bank would remain as the lead bank in the credit involved which implied that Manufacturers was not going to proceed.

Q Did Manufacturers or Topper Corporation ever tell you that Manufacturers made a decision on that matter?

A I don't specifically recall.

Q Do you have any further recollection of what the persons

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(Whereupon the preceding question was read back by the Court Reporter.)

MR. BICKS: Objection to the form. I wouldn't object if you asked him prior to the time. You say at the time he read it, you don't make clear whether before or after he read it.

MR. GREINER: That's what I mean.

A At the time I read this?

Q (by Mr. Greiner) Yes.

A Having read it in the footnoted fashion, I assume I was aware of it.

Q Do you know whether you knew about that information prior to the time that you reviewed Hayden Stone Exhibit Ford 4?

A I recall knowing generally that there were returns, etc., but relating them to those specific figures I don't specifically recall having done that.

Q Do you recall discussions with Topper officers about returns, discounts, and allowances?

A In very general terms I recall that.

Q Prior to June 28th?

A I recall discussing the matter at the May 28th meeting when we discussed the basic extended dating program again as it related to the competition, the reason why it existed in the industry.

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was marked by the Court Reporter.)

Q (By Mr. Greiner) I show you what has been marked as Haydon Stone Exhibit Ford 6 for identification, which is a Topper Corporation Consolidated Loan Status Report of August 16, 1971. Do you recall receiving that prior to the closing?

A I do.

Q Are those handwritten notations in your hand?

A No.

Q Do you know whose handwritten notations those are?

A No.

Q Did you ask for the Loan Status Report as of August 16th from Topper Corporation?

A We, during that period, were receiving them as a normal part of the transaction.

Q Were you receiving Loan Status Reports on a daily basis through the time of the closing?

A I believe so.

Q What ---

MRS. BAMFORD: Pardon me. You said through what period of time?

A Through the time of the closing.

MRS. BAMFORD: From when? Why don't you just clarify?

* * * *

A As I recall, it was the standard analytical formula which related balance sheet items to sales, as I recall.

(Whereupon the preceding answer was read back by the Court Reporter.)

Q (by Mr. Greiner) Referring specifically to the one hundred and seventy four day period for 1-23-1970, can you tell us what the one hundred and seventy four day figure represents?

A To the best of my recollection it would indicate the average time it took the Topper Corporation to collect its receivables.

Q Were those receivables the ones which were booked as sales during 1970?

A It's my recollection the data used to compile that number related to the balance sheet accounts set forth in the Company's audited statements.

Q You're referring to the accounts receivable as of 1-23-1970?

A Right.

Q The figures appearing for 1971, '72, '73, '74, and '75 are estimated, is that correct?

A That's correct.

Q Do you know if Mr. Finnen specifically asked Topper for the information contained in the column Collection Period?

A It's my recollection that we at Ford Credit computed those ratios based on the information provided to us by Topper.

Corporation.

Q Do you know from what documents or other information the Collection Period numbers were determined by Ford?

A Exhibit A is just a typewritten spread sheet from the previously obtained handwritten projections.

Q I am referring specifically to the Collection Period now.

A I don't recall if the Topper people provided us with Collection Period data. Again it's a simple statistical computation of that number based on data made available to us by the Topper Corporation, specifically accounts receivable estimates and sales estimates.

Q Was that information provided in documentary form by the Topper people?

A It is my recollection that that is the projections that we received.

Q Not the projections. I am talking now about the Collection Period data for '67, '68, '69, and '70?

A I don't recall if the Topper people specifically provided us with that information. It's simply an analytical computation that was made at Ford Credit based on the information available, both historical and projected, provided by the Topper people.

Q Did you question the Topper people about the fact that collections took on the average a hundred and seventy-four

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allowing advances, that Topper could borrow an additional Three Million Eight Hundred Thousand Dollars?

A Yes.

Q Can you identify Hayden Stone Exhibit Ford 20 for identification?

A It's a memorandum dated November 23rd addressed to members of the Finance Committee, pertaining to the revision of approval terms, Topper Corporation.

Q Do the first pages of Hayden Stone Exhibit Ford 20 appear to be copies of the pages which form a part of Hayden Stone Exhibit Ford 19, with the exception that Hayden Stone Exhibit Ford 20 is unexecuted by the Credit Committee and Finance Committee?

A Yes.

Q Did there come a time, Mr. Pompea, when you were advised that Topper would suffer a loss of approximately Ten to Fifteen Million Dollars during the year 1971?

A Sometime shortly after Thanksgiving the Topper people visited with us in Dearborn and indicated that the fourth quarter sales were not developing as projected, and that they anticipated a significant loss, and it's my recollection that when pressed they indicated the loss could be as high as their net worth.

Q How much was their net worth at that time?

A I would like to check the statement, but my recollection is it was in excess of Thirty Million.

Q Did that come as a surprise to you at that time?

A A modest shock.

Q When you say a modest shock, would you tell us what your reaction was when you heard that?

A Close to homicidal. That was our reaction.

Q Did somebody from Topper call you in advance to make an appointment to visit you?

A I don't specifically recall that an appointment was set up, but I assume so, and Dave Downs and Orenstein came, as I recall, essentially to physically show us some of the new Sesame Street products that were in the development stage, and they oh, by the way, sort of commented towards the end of the discussion, they dropped the bombshell on us.

MR. FITZGERALD: Objection. The answer is not responsive to the question.

Q (by Mr. Greiner) Who was present at that gathering from Ford?

A As I recall Mr. Cornwall, Lavery, myself, I think other members of the staff were in attendance at various points, butessentially it was the three of us.

Q Were you all present when they dropped the bombshell?

A The bombshell was --- The true dimension of it was extracted

* * * *

I ask if to your knowledge you had seen copies of those reports prior to your receipt of that letter?

MR. FITZGERALD: You mean letters, right?

MR. BICKS: I'm asking letter at the time.

A We received such reams of those Loan Status Reports I couldn't associate specifically receipt of specific ones.

Q (by Mr. Bicks) When you say —— Do you have any recollectio of having received those prior to the letter?

A No specific recollection.

Q Sir, my difficulty with your reams statement now, and my question about your statement before that we got them every day, is that when we searched the files here, and I can tell you we have done the best we can, I'm not representing to you that we haven't missed anything, we don't find any daily sequence Loan Status Reports for any period, and that is why I asked you if you were aware of any destruction. Now, have you had occasion to look through the files to find reams of those reports?

A My recollection is that we had many of them. I don't believe we received them on a daily basis, and as I think I previously testified I never really determined whose responsibility it was to send them to us, whether the Bank's or Topper's. We perhaps received them from both sources, but we did receive a number of them, the best I can recall, June through September, but again not on a daily basis.

Q And was it your testimony that you don't recall one way or the other as to whether you received the report, Plaintiffs' Exhibit 1262, prior to that letter?

A I can't specifically recall.

Q Same question with regard to the loan status report referred to in Plaintiffs' Exhibit 1263?

A I don't specifically recall those.

Q Thank you. You don't specifically recall having received them prior to this letter, is that your testimony?

A Prior to.

Q I think you made clear in your testimony that FMCC received five year projections prior to proceeding with the loan, is that true?

A That's true.

Q Again however we have been unable to find copies of the projections, so I must bother you with a few questions about what was in them. Were those projections month by month for the year of '71, or just for the whole year?

A To the best of my recollection they relate to projections in the Hayden Stone Exhibit Ford 7, which were balance sheets, income statements, source and use of funds statements

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receivables prior to the closing were those providing for payment within a hundred and twenty days that were more than sixty days past due.

Q The question is were you aware prior to the closing of the Ford loan to Topper Corporation on September 16th that accounts receivable more than sixty days past due were ineligible under the loan agreement as it then existed?

A My best recollection was that ineligible receivables were those originally providing for payment within a hundred and twenty days, that were more than sixty days past due.

Q Mr. Pompea, Mr. Bicks questioned you about the frequency of Ford's receipt of Loan Status Reports, and I believe that you testified that you did not receive them on a daily basis. I believe in respo[illegible] to my question on direct examination you said you had received them on a daily basis. Can you tell us how frequently you did receive them?

A My very best recollection is that they were not received on a daily basis, but on a fairly frequent basis, and my best estimate would be on a weekly basis.

Q Prior to the closing of the Ford transaction, had you received the Interim Financial Statement as of June 30th, 1971?

A I have no specific recollection.

(Whereupon Hayden Stone Exhibit

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testified he prepared it.

MR. GREINER: He didn't say he prepared it. He said he knew about the information in the document prior to the closing of the Ford transaction.

MR. BICKS: He did?

MR. GREINER: That's correct.

Q (by Mr. Greiner) Is that right?

A That's right.

(Whereupon a discussion was held off the record.)

Q (by Mr. Greiner) I first show you what has been marked as Defendant Hayden Stone Ramsiur Exhibit 18, and I refer you to paragraph six which relates to the borrowing base, is that correct?

A That's true.

Q There are three subsections; A, B, and C, is that right?

A Yes.

Q Do you recall preparing Hayden Stone Exhibit Ford 10 prior to the closing on September 16th?

A I don't specifically recall preparing it.

Q Whose handwriting appears at the bottom, if you know?

A Mine.

Q Did you review this document prior to the closing on September 16th?

A To the best of my recollection I did.

Q Were you aware prior to the closing that as of August 31st, 1971 accounts receivable more than sixty days past due — Strike that. That should be sixty days or more past due totaled Eight Million Two Hundred Thousand Dollars?

A To the best of my recollection I did, but this document does not define whether they were accounts originally sold on terms of a hundred and twenty days.

Q Fine. Were you aware that goods sold but held in field warehouses was Four Million Three Hundred Thousand Dollars as of August 31st, 1971?

A To the best of my recollection I was.

Q Were you aware that accounts receivable which had been redated not longer than a hundred and eighty days were Six Million Two Hundred Thousand Dollars?

A To the best of my recollection I was.

Q Were you aware that the total eligible receivables were Seventeen Million Six Hundred and Fifty Thousand Dollars?

A To the best of my recollection I was.

Q Mr. Pompea, did you talk with any representatives of Breed, Abbott & Morgan prior to this deposition?

A I did not.

Q Do you know whether anyone at Ford did?

A I have no knowledge that anyone did.

company.

A I have recently seen in the public offering prospectus in early 1971 a statement of certain sales that had had longer terms, relatively long terms. I don't have any other recollection.

Q My question is whether such a practice had come to your attention by September 28, 1971.

A I don't specifically recall, except that the prospectus was certainly dated prior to that, and I have seen the prospectus.

Q Prior to September 28, 1971, had you become aware of a practice at Topper which has been called "redating"? And by redating I mean a change in the terms of an account receivable already issued so as to extend the date on which it became payable for a term longer than that customarily employed by the company in other circumstances.

A I don't recall that.

Q During the same period, that is, up to September 28, 1971, had you become aware of any practice at Topper by which Topper permitted the exchange of nondefective merchandise?

A No.

Q Up to the 28th of September, 1971, had you become aware of any practice at Topper by virtue of which Topper permitted nondefective merchandise to be returned?

A No.

Q I show you a document which has been previously marked as Plaintiffs' Exhibit 3 for identification, and I represent to you that it's been previously identified as certain financial statements prepared by Topper Corp., unaudited, as at July 31, 1971. And I ask you whether or not prior to September 28, 1971 those July 31, 1971 financial statements had come to your attention.

A I don't recall.

Q Is there any way you could refresh your recollection on that point, Mr. Provine?

A Nothing other than referring to a correspondence file or to see if there were a set of these in it with my initials on them or something. That would indicate that I had seen them.

MR. CRACO: Let me ask Mr. Thomas whether in his searching of the correspondence file he has found anything of that description, and if he hasn't particularly adverted to that, whether he would be particularly good enough to do so and tell us whether anything was there.

substantial discussions of the registration rights.

Q Can you summarize them for us?

I will withdraw that question and ask you this question instead:

Did those conversations have to do with the registration rights of the convertible common stock?

A Convertible feature; that's right.

Q And exclusively with those registration rights?

A That's correct.

Q Go ahead. What else was said?

A I don't recall anything else.

Q I would like to ask you a few questions concerning the lien limitation.

Did there come a time on or before the 14th of September when you became aware of a relationship between Topper and the First National City Bank?

A Yes.

Q And in connection with becoming aware of that relationship, did you learn of certain borrowings made by Topper upon the collateral of accounts receivable?

A Yes, I knew that; I knew there was an agreement.

Q Did you see the agreement?

A To the best of my recollection, I did.

Q And when in point of time did you first see the

A No. * * * *

Q (continuing)-- or rights of return?

A I recall no discussion of that.

Q Did you have any conversation with anybody else at White & Case concerning the candor of Topper officials during that period of time?

A No.

Q Did you have any conversation with anybody about that subject?

A No.

Q Did you form any opinion on that subject at the time?

A Yes. At the time I felt that I had no reason to doubt their candor.

Q I show you a document which has been produced by your office in connection with our documentary discovery, and it bears White & Case documentary identification designation 01095, and I understand it is identical with Plaintiffs' Exhibit 543. It consists of a copy of an August 25, 1971 letter to Manufacturers Hanover and Topper Corporation from the First National City Bank.

I show you that document and I ask you whether that document or the transaction to which it refers ever came to your attention during this period?

A I have a recollection of being informed of that.

Q Who informed you?

A I believe that it was revealed at one of those two meetings, perhaps the--probably the September 8th meeting.

Q Who revealed it at that meeting?

A I don't recall.

Q What was said in that connection?

A I have no recollection.

Q Was Mr. Thompson present at the time it was revealed?

A My recollection is very ~~in~~unfirm on this.

Q It is very important, so I ask you to search your recollection, and favor us with your best recollection as to who was present at the time that you came into possession of the knowledge that there was such an instrument or transaction as that.

A My memory doesn't serve me.

Q Is it fair to say it is your best present recollection that the revelation was made at the meeting of September the 8th?

MR. HARTFIELD: He has already said, Mr. Craco, he doesn't remember.

MR. CRACO: No, I think he already said

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up while I am reflecting on this.

Q Would you describe that vague recollection, please? What is the vague recollection of?

A I have the vaguest recollection that I knew of a temporary increase in bank lines.

Q And that the temporary increase was extended pa the projected closing date of the private placement?

A No, I have no recollection on that point at all at all. It is just that I have this vague recollection of having been told that there was a temporary increase i the bank lines.

Q Do you have any recollection whether this increase was a short term one?

MR. BICKS: Other than his use of the word "temporary"?

MR. CRACO: I mean exactly what I said.

A I have no recollection of the duration of the increase, except the vague recollection that it was tempo

Q Putting all these recollections together and having recourse again to Exhibit 6, do you recall whether you learned of this increase in the bank line in connecti with the discussion on the 8th about the Ford deal and short term bank lines?

A I can't recall now what "bank short term" meant.

* * * *

A I recall that Orenstein and Rose were asked to explain what had happened.

Q Who asked them?

A I don't recall.

Q What did they say?

A I have got no good recollection of that meeting; I just know that it happened. I recall Mr. Orenstein talking.

Q Do you recall what he said--

A No, I don't.

Q (continuing)-- in substance?

A Well, to the best of my recollection, the substance of it was that he had been deceived by his sales people.

Q And you have a recollection of his saying that; is that correct?

A Yes.

Q Did he amplify on that as to how he had been deceived by his sales people?

A I believe he stated that the sales people had made arrangements with customers of which he had not been aware.

Q Did he describe what those arrangements were?

A That there were assurances by sales people that sales people communicated to customers which purported to commit Topper to take back unsold merchandise.

Q Did Mr. Rose have anything to say on the subject of this development in the course of the meeting on the 30th of December 1971?

A As I recall, Rose deferred to Orenstein on these questions.

Q In what way did he defer to Orenstein?

A When the question was asked, he would defer to his senior to answer it.

Q Do you recall Orenstein saying anything else concerning these arrangements?

A No.

Q Do you recall Rose saying anything as to whether or not he had known of the arrangements?

A No.

Q Do you recall any conversation as to whether one or another of them had approved the arrangements?

A Well, Orenstein stated that he had been deceived by the arrangements. To me, that would connotate that he did not approve of them. I don't recall statements by Rose.

Q Was there any discussion as to the form these arrangements took?

* * * *

but not withstanding that, I think the phrase ought to be defined for the witness.

Q Do you understand what "over-advance" means?

A Yes, I believe so.

Q Your answer is no?

A To the best of my memory, it is no.

Q Prior to the private placement, were you made aware that to enable such over-advances, City Bank had amended its financing agreement with Topper once under date of July 15, 1971 and again under date of August 25, 1971?

A I will have to repeat what I stated this morning:

I have this recollection, that there was a temporary increase of bank line; that that knowledge had come to me. That is my recollection.

Q Were you aware--and you were dealing with your recollection prior to the private placement now; right, sir?

A My recollection prior to the closing.

Q That is right. When I say prior to the private placement, as I indicated, I mean prior to the closing of the private placement on the 28th of September 1971. Do we understand each other?

A That's correct.

* * * *

* * * *

Q Do you have any recollection at this time of th use to which those funds were going to be put?

A No.

Q Do you have any recollection of receiving any i formation that it would be used for new plants or equipment?

A Which trarsaction are you referring to?

Q Any of them.

A I don't recall.

Q Or the hiring of new employees?

A I can say, the best I can say is the way I attac the Sesame Street new business with the financing need; and I do have a recollection that that was discussed.

Q At the beginning of your questioning by Mr. Crac when we met last Friday, you said that you did have a-- you said you were curious in your own mind as to the finar cial soundness of the transaction. And that to satisfy your curiosity, so to speak, you approached Mr. Hinsey rather than Mr. Johnson, who was a director of the compan

Is that basically correct, or is that fairly stated?

A That may be a fair statement of what I said. It is, to refer to what was going through my mind as a question of financial soundness maybe is too strong. I was you could project it?

A That's correct.

Q Do you remember who was present at those meetings in December of 1970?

A Ed Waldman, Al Lusk, Dave Holzman, Henry Orenstein, myself, David Downs.

MR. LILLIE: Speak up just a bit.

A Henry Orenstein, myself and David Downs. That's all I could recall.

Q Taking you back to the period, the end of 1970 or very early in 1971, was the subject of the projected public offering discussed at those meetings, in the context of Topper's operations for the year ahead or the picture for the year ahead?

A If we were considering the public offering, yes, it would have been discussed.

I don't recall when we discussed it with them.

Q Do you recall ever at any time discussing the private placement with City Bank?

A Yes.

Q What was their attitude towards it?

A They welcomed it.

Q Did anybody tell you why they welcomed it from City Bank?

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conform to my understanding."

My first question is this: Could you tell us what you meant by "normal balancing of customer inventory"?

A Well, a number of our items, as I recall, were sold in assortments and the customer would order an assortment and leave it to the judgment of Topper as to what went into an assortment.

There had to be logically some kind of imbalance reflected in the field based upon taste in different parts of the country. Assuming for the moment that we had every single assortment exactly conforming to every other assortment. And -- we expected that there would be some kind of balancing between customers as to -- you know, relative amounts of specific items within assortments.

Q All right. My question is, why would the letters, as you put it, not conform to such understanding?

A Because they were too broad from my reading.

Q In what sense were they too broad?

A If I can look at the letters --

Q Please do.

(Witness referring to documents.)

A It relates -- I am looking at one letter, American

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Leisure Products, it relates to any merchandise in our 1971 line. This letter refers to merchandise sold in 1970.

Q Right.

A Well, in order to effectively balance something in the field, it would have had to have existed at the time of the original sale.

Q Right.

A So -- I could not see, looking at this letter, how you can relate that to something which had been out of balance in assorment if it was perhaps not even manufactured until 1971, and this relates to the 1971 line which includes 1971 manufactured items.

Q So that by balancing inventory and the contrast with the letters, you meant that the letters could be construed to allow for the exchange of merchandise that was manufactured in an accounting period subsequent to that?

A That was my --

Q It could be construed that way, to which the original merchandise had been shipped?

A That was my understanding.

Q And that was the basis of your distinction?

A Yes.

Q Does that distinction have any accounting significance, to your view?

A To my view, yes.

Q Could you tell us what that was? Perhaps with your counsel's permission, maybe we can shortcut this.

MR. FITZGERALD: Fine, if we can.

MR. BICKS: Pardon?

MR. FITZGERALD: If you can.

Q Do you recall testifying before the Securities & Exchange Commission in connection with certain matters involving Topper?

A Yes.

Q Were you represented by counsel on that occasion?

A Yes.

Q Did you testify under oath?

A Yes.

Q Did you receive a transcript of your testimony?

A Well —

MR. FITZGERALD: We received it.

A Oh, all right. I didn't.

Q You or your counsel?

MR. FITZGERALD: We received it.

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A It looks like Julie Schwartz's handwriting.

Q Do you recall the circumstances under which that was prepared? Did you ever see that before?

A I don't recall. I don't recall ever seeing it before.

Q That does appear to be Julie Schwartz's handwriting?

A This does. (Indicating)

Q Whose handwriting is the attachment in, do you know?

A I have no idea.

MR. BICKS: Off the record.

(Discussion off the record.)

Q With regard to the period from roughly following the end of the first quarter of '71 through the summer of 1971, could you tell us what you presently recall about Topper's needs for additional monies and conferences with Citibank concerning such need?

A Only that the meetings and conferences followed a pattern which had existed for a few years.

Q Could you tell us what that pattern was?

A That every once in awhile, First National City Bank would turn the screws on the loan availability and we would have meetings. And then the availability would be

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adjusted to meet our needs.

Q But the ultimate decision was always the bank's?

A Yes.

Q Did there come a time in July of 1971 when Topper's needs for funds were particularly acute?

A I really can't say that that is the case. They were as acute as the bank's formula during that month would make them acute.

Q So really, in a sense, you were at the mercy of the bank, weren't you?

A Absolutely.

Q By "you," I mean Topper and not you personally.

A Yes, yes.

Q By "the bank," I mean Citibank.

Did you understand that?

A Yes.

Q Do you recall visiting with the bank in mid-July of 1971 to discuss some change in the formula to tide Topper over until the private placement could be completed and funds from the private placement delivered to the bank?

A Not specifically, no.

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Q 17 and 18.

A No.

Q And do you understand that when I refer to a draft of such a letter I mean any form of writing that contains the language of the text of that letter or the substance of the language of that text. I am not necessarily referring to a document which contains the specific addressee or the specific signature contained in any of these letters. I am referring to anything that purports to reflect the same language or some prior version of the same language.

You understand that that is what I meant by a draft?

A Yes, sir.

Q And your answer is that you saw no such document with respect to these letters prior to mid January, 1972?

A Correct.

Q I show you a document which has been previously marked as Arthur Young Exhibit 1 for identification on March 10, 1975, and it has been identified by Mr. Pierce as a statement given by him,

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that you were reviewing?

A Balancing of inventories relates to the fact that a number of Topper items were being sold in assortments. Topper was collecting the material which went into assortments. Customers were concerned that they might have items out of balance. We assured them that they would not be -- that they should not be concerned with that, that we would balance the inventory in the field.

Q By substituting items which would alter the assortment but not the value of the order; is that right?

A Well, not necessarily alter the assortment but put the assortment into balance.

Q If they had a surplus of a particular commodity it would be taken back by Topper and dollar-for-dollar different merchandise substituted; is that the thrust of it?

A No.

Q Go ahead.

A The inventory would be balanced in the field from one customer to the other or balanced through material that Topper would have relating to the exact same assortment.

Q On any occasion in connection with the balancing of inventory, as you understood it, was merchandise returned to Topper as part of the mechanics of accomplishing the balancing?

A I believe so, but I can't be positive.

Q And in those cases when that occurred was other merchandise of the same value delivered to the customer to balance the inventory in his hands?

A As far as I know.

Q Now, was this a practice which Topper employed from time to time with various customers?

A I believe so.

Q Did Topper furnish letters to all of the customers to whom it accorded this accommodation reflecting the terms of the balancing of inventory?

A No, I don't believe so.

Q Do you have any recollection as to what reason there was, if any, for the furnishing of a letter of this character to the customer that was at issue in the latter part of 1970?

A No.

* * * *

Rose - direct

Tell us the circumstances under which you came upon those letters.

A As I recall, we had received an inquiry of some kind from the American Stock Exchange. I believe it was in the process of reviewing a reply which would be going to the American Stock Exchange that the existence of these letters was uncovered.

Q And what steps were you taking at the time the letters were uncovered in response to the American Stock Exchange?

A Just attempting to answer the questions.

Q Do you recall the question that led you to steps which ultimately disclosed this letter?

A No.

Q Where did you find them?

A I didn't.

Q Who did?

A Fred Pierce.

Q Now, I take it then that Mr. Pierce produced them and showed them to you?

A During a meeting, yes.

Q And where was that meeting conducted?

A Mr. Orenstein's office.

Q Who was present then?

A Physically, Mr. Downs, myself, Mr. Orenstein, Mr. Pierce.

Q Did the meeting relate to subjects other than those particular letters?

A It related to the entire inquiry of the American Stock Exchange.

Q And I take it in the course of the meeting these letters came up; is that right?

A Correct.

Q How did they come up? Who introduced the subject?

A I would have introduced the subject.

Q And what did you say?

A I wanted to be sure that the response that we were giving the American Stock Exchange was accurate.

Q Did that response have to do with the terms of sale?

A I believe so.

Q And what did you say relating to the terms of sale that led to the subject of the letters coming up?

A I don't recall.

Q In any event, you said something that was designed to assure that the response to the American Stock Exchange was accurate, and as a result of whatever you said the letters became the subject of conversation; is that correct?

A Correct.

Q And did Mr. Pierce then produce the letters?

A Correct.

Q What did he say in producing the letters?

A I really don't have a specific recollection.

Q Did he say anything that indicated to you that these letters had a bearing on the accuracy of the response that you were about to make to the American Stock Exchange?

A Oh, no, no. I didn't mean to suggest he was evaluating the response. He produced the letters as a result of the discussion regarding that particular answer.

Q And how many letters did he produce at that time?

A I believe it was fourteen.

Rose - direct

Q These were retained carbon copies of the letters that he indicated had been sent to customers; is that correct?

A Yes.

Q Did he show you the letters at that time?

A I saw at least one of the letters at that time.

Q Do you recall what letter that was?

A No.

Q Do you recall the customer?

A No.

Q Did the letters contain language of the sort that was in Exhibit 2 which I showed you a few moments ago?

A I believe so.

Q What was your reaction upon seeing these letters?

A I was extremely upset.

Q Did you say anything?

A Yes.

Q What did you say?

A Well, the meeting was continuing while I was reading the letter, and I indicated that these letters were not in accordance with my understanding about our policy -- or the letter I was reading was not in accordance with my understanding of what our policy was.

Q Did you elaborate on that?

A Well, yes.

Q What did you say?

A I merely reiterated what the policy was as I understood it, what our responsibilities and obligations were, that the letter I was reviewing did not conform to that.

Q What did you say concerning your understanding of your policy and responsibilities?

A I repeated the balancing of inventory concept.

Q In substance as you have testified to it this morning?

A Yes, with one specific difference, or I should say addition.

Q What was that?

A My objection to the inclusion of the 1971 line. At the time that I commented that was what I was particularly upset about.

Q What did you say in that regard?

A I simply said that that did not restrict it to a balancing of inventory concept, that it was much too broad and not in accordance with my understanding.

Q Did you understand that the letters, in effect, gave the customers certain rights of exchange which you had not understood that they enjoyed?

A Yes.

Q Did you say something about that?

A Yes.

Q What did you say about that?

A Just what you just said.

Q Did you have anything else to say by way of reaction to the discovery of these letters at that meeting?

A Well, simply that it -- well, there was a discussion as to whether or not I was correct. I insisted that the letters were not in accordance with my understanding, and at the time we were discussing this with our attorney. And although the others in the room disagreed with me and felt that it did conform, that I was just really not reading it correctly -- I think I would put it that way -- our attorney insisted that if I was concerned, that I probably had a right to be concerned and we should review it again.

Q And you say a conversation ensued at that meeting about whether you were correct or not. I take it that people in the room indicated that you were not correct in your understanding of the letter; is that right?

A Let's say -- I could only say that they didn't agree that the letters did not conform to what I understood was the balancing of inventory concept.

Q And they expressed that disagreement with you; is that right?

A Yes.

Q Who expressed that disagreement?

A Mr. Orenstein.

Q What did he say?

A Well, just in general he felt that, you know, I was not reading the letter correctly. I am giving you the substance. I don't recall the words.

Q All right. Who else?

A Mr. Downs.

Q What did he say?

A Same thing.

Q Who else?

A Only Mr. Pierce was left.

Q And did he say that he disagreed with your interpretation of the letter?

A I don't believe he expressed an opinion. I am not sure, but I don't believe he did.

Q Concerning the correctness of your reading of the letter; is that right?

A Right.

Q In the course of conversation at that meeting did anybody say in words or substance that you had previously seen a draft of these letters?

A Yes.

Q Who said that?

A Mr. Pierce.

Q What did he say on that subject?

A He indicated that he felt that I had seen a draft of the letter.

Rose - direct

Q And did he say when?

A The approximate time that the letters were written.

Q Did Mr. Orenstein say anything about that subject?

A I believe he recalled that a request was made for assurance by a customer, and as I recall, he remembered asking Mr. Pierce to review the draft of the letter with me.

Q Did Mr. Orenstein indicate to you in words or substance that it was his understanding that you had cleared the language of those letters?

A No.

Q And did anybody else speak on the subject of your having seen the text of the letters before?

A I don't believe so.

Q I take it that you responded to that suggestion by Mr. Pierce?

A Yes.

Q What did you say?

A I told him it was untrue.

Q Did Pierce have anything further to say on the subject?

Rose - direct

A I don't believe so. Not at that point.

Q Did you have anything further to say on the subject at that point?

A Yes, I believe I did comment that I was also upset that there was more than one letter. Even if the letters were through some mistake -- and we will call it that, typed incorrectly and the wording changed in error -- I could not understand how fourteen letters or something of that magnitude went out to customers without anybody knowing about it.

Q Did anybody respond to that observation by you?

A Yes. Mr. Pierce indicated that he used it as a form letter.

Q Is that all he said on that point?

A I believe so.

Q Did you have anything to say to that?

A I was terribly upset that there was any consideration, a form letter had been reviewed, because that was not the situation at all.

Q You expressed that upset, I take it?

A Yes.

Rose - direct

Q Did anybody else in the room have anything to say to that subject?

A I don't recall anything else.

Q Just to make sure, did any of the drafts of the letter that you did in fact review relating to balancing of inventory contain language similar to that which is in the letters in Exhibit 2?

MR. FITZGERALD: Could you read back that question, please.

(Question read.)

MR. FITZGERALD: Objection. His testimony is that he reviewed one draft, not drafts.

BY MR. CRACO:

Q Well, did you review only a single draft or were there subsequent drafts?

A No. I only recall reviewing a draft.

Q And changes were made from the original version to the version that finally was okay with you; is that right?

A Yes.

Q In the course of either reviewing the original version that was presented to you or in the course of any of the changes that were made before it was finally okayed, did the language read similarly to the language in Exhibit 2?

A I don't believe so.

Excuse me, what I am trying to say is I don't believe the language in the original draft was similar to the final.

Q What I am obviously trying to get at is whether the language may have been showed to you in that form and corrected to some other form by you and somehow or other gone out in the original form rather than the corrected form.

A I don't really think that's possible.

Q Now, in the course of that meeting was there any conversation about the impact, if any, of the arrangements disclosed by these letters on the accounting treatment to be accorded to the sales which were covered by those letters?

MR. FITZGERALD: Read that back again, please.

(Question read.)

BY THE WITNESS:

A I don't believe so.

BY MR. CRACO:

* * * *

with them, and whoever is right, that's it, there is no problem.

With the Waldman group, their ability to maintain records was at a level that was appalling to me. That was the reason we developed such a detailed reporting for them. When errors were uncovered, it was extremely difficult to get them corrected. More often than not we didn't even know there was a difference between what they claimed to be the eligibility and what we were reporting to them on a daily basis until suddenly we would get a telephone call that we had a crisis, we were over our eligibility.

Businesses cannot exist on constant crises, which they create --

BY MS. BAMFORD:

Q Well --

MR. FITZGERALD: Let him finish.

BY THE WITNESS:

A In other words, they simply seem to be constantly creating artificial crises by letting us know at the last minute when we would need money for payroll or other major expenditures that

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we didn't have eligibility.

What I am saying is that they endangered the company's existence by doing that.

BY MS. BAMFORD:

Q Now, let me ask you whether, in your opinion, Waldman and Siegel were not "capable of looking at the total picture" as you testified usual bankers are?

A I didn't think they were, and as I am saying --

Q What did they look at in particular?

MR. FITZGERALD: Objection. How can he know what they looked at?

BY MS. BAMFORD:

Q What is the basis for your conclusion that they were not capable of looking at the total picture?

A It's just what I have described to you. In other words, what I am trying to say is that the security of a bank is not -- it's not only the assets of a company, but its future.

To put a company as big as Topper in a position where it suddenly might not be able to

* * * *

period?

A I can give you an answer in substance. That is a question of approach and attitude on the part of Mr. Waldman which was, with respect to additional financing, to bring in whatever we could which was subordinate to his loan.

Q When you discussed prospective financing with Waldman, did you bring to Waldman plans for financing which were already in the making?

A I don't recall if that was the case.

Q Do you recall whether Waldman ever told you that you should make a plan to go get a financing?

A Mr. Waldman on more than one occasion expressed unhappiness from time to time during all of those years in question with eligibility and made it very clear that he would welcome any financing as long as it didn't affect the bank's position in terms of security; that is, unsecured, long-term financing was something he desired. This was an impression and attitude.

Q Did he ever suggest during that period 1969 to 1971 that Topper go get financing from another source?

A I would say yes.

Q What was the substance of any such suggestion?

A Pressure in terms of eligibility formulas.

Q Whose idea was it in the case of each of these offerings during 1969, '70 and '71 to seek outside financing, by which I mean a public or a private offering?

MR. GREINER: Objection.

THE WITNESS: I don't understand the question, Barbara.

MS. BAMFORD: Do you want to repeat it.

(Question read.)

BY MS. BAMFORD:

Q Did the idea for an offering at Topper initiate at Topper?

A I don't know how to answer the question. An idea, what is an idea?

MR. GREINER: I am going to object to that question, also.

BY THE WITNESS:

A Really, I don't know how to answer it. I can give you an idea, just by putting you in a position where you have no other way to go. So I would have to say the idea, if you take that approach for offerings, public or private, certainly would have come, at least in part, from Mr. Waldman.

BY MS. BAMFORD:

Q Would it have come through indirect pressure or through instructions by Mr. Waldman?

A Always pressure.

Q Did Mr. Waldman ever indicate to you or to your knowledge did he ever indicate to any other person at Topper that as a condition of continuing the loan Topper must go out and obtain financing from another source?

A No. But I can state that on at least one occasion -- and I don't recall when -- he made it very clear we would not get additional formula financing, and that would be an alternative, you know, to resolve the problem.

Q Did Mr. Waldman ever suggest any specific form of financing as an alternative to the bank loan?

Rose - cross (Bamford)

A It was never -- I can only say what it was not. It was not that we would bring in another financing organization to replace First National City Bank. It was always to bring in funds which would be, in a sense, beneath the First National City Bank loan.

Q When you discussed prospective offerings with First National City Bank did you do so because you felt that it would be appropriate to inform the bank of intentions to have prospective offerings?

A Absolutely.

Q When you discussed the prospective offerings with the bank, were the plans already initiated and underway to have those prospective offerings?

A Only, as I recall, once during all of the time I was at Topper.

Q Are you testifying that ordinarily plans were not underway?

A I'm stating that an irrevocable decision had not been made.

Q My question was not had an irrevocable decision been made but rather had plans already been initiated and underway?

Rose - cross (Bamford)

meeting took place, because we did meet with First National City Bank.

Q Do you recall meeting with First National City Bank and telling them that Ford Motor credit had confirmed a $7 million loan to Topper?

A I don't believe it happened that way at all. In other words, we didn't go in, sit down and drop a bomb in the middle of the table.

Mr. Waldman knew of the work that was being done, so we didn't come in --

Q How did he learn of that work?

A From Mr. Orenstein.

Q Do you recall what Waldman's reaction was when he learned that the Ford Motor credit line would be used to reduce the bank loan?

A He was not happy in this particular instance.

Q And why was that?

A Because this was the first instance where his collateral was being affected. This was not subordinate to him. This was in participation with him, and he didn't care for that.

Q What was the substance of the conversation with Waldman about the Ford loan?

group, and we felt it would be best to bring them in at a point when we would be close to reaching some kind of arrangement.

Q Were you afraid of any reaction on the part of City Bank if you told them early?

A We were concerned with the approach that Mr. Waldman might take, yes.

Q What was the nature of that concern?

A The nature of the concern was the pressure that they had a tendency to build up on everything that they felt was appropriate for them, and if Mr. Waldman became upset he could increase that pressure, and that could be seriously harmful to us.

Q How could he increase the pressure in this instance? I don't quite understand what it is that was the concern of Topper in causing Topper not to let City Bank know about the Ford loan in its early stages.

A Just work with the eligibility formula which he developed as he went along.

Q Was there a fear on the part of Topper that City Bank would want to drop out of the financing

Rose - cross (Bamford)

group if it knew of any intention to go unsecured?

A Not drop out as such, but they could certainly affect our ability to bring in additional funds just by the manner in which they managed the existing loan.

Q Do you mean they could increase or decrease eligibility?

A That's exactly what I mean. Instead of eligibility, let's call it availability of funds under the formula as they worked it.

Q Did you feel that City Bank would want to reduce the availability of funds if it knew that you intended to go unsecured?

A I certainly felt that they could affect our ability to not only bring in additional funds but to go unsecured by the manner in which they managed the account during this period, yes.

Q How could City Bank affect your availability to bring in additional funds?

A Create a crisis, which they could do any time they wanted.

Q How would that affect your availability to go elsewhere for funds?

Rose - cross (Bamford)

A Just miss one payroll and you'll find out. Don't pay your vendors important payments and let word get out that you are having financial problems which are created by temporary adjustments of availability.

Q Was there ever a real fear that City Bank might drop out of the Topper lending group prior to the private placement, a real fear?

A I don't believe so.

Q Do you recollect whether there was any similar attempt to keep knowledge of the 1971 private placement from City Bank in the early stages?

A I don't recall that that was the same at all, because here you are talking about additional funds, again, which would be subordinate to the bank. The Ford situation was different.

Q Who made the ultimate decisions at Topper regarding what items to produce?

A Henry Orenstein.

Q Who made the ultimate decisions at Topper regarding what customers to sell to?

A What customers? We had many, many customers. I don't know how to answer that question.

Rose - cross (Bamford)

The sales department, of course, would determine a customer list, which was built up over a period of years.

Q Who made the decision at Topper regarding which customers' orders would be filled at any given time?

A Which customers?

Q Yes.

A That was really more or less routine.

Q What department made those decisions?

A The shipping department, based on releases of orders, based on the day the order is supposed to be shipped.

Q Did anyone at City Bank ever tell anyone at Topper, to your knowledge, what items it should produce?

A No.

Q Did anyone at City Bank ever tell anyone at Topper, to your knowledge, what customers it should sell to?

A They certainly could influence our ability to sell to a customer simply by declaring that customer ineligible.

Go ahead.

BY THE WITNESS:

A I would have to say that they had almost total control.

BY MR. BICKS:

Q I ask the same question with regard to Topper's ability to grow.

A They controlled our ability to grow.

MR. BICKS: I don't have any other questions.

CROSS EXAMINATION

BY MR. DAILEY:

Q Mr. Rose, I would like to clarify one subject of Mr. Craco's examination this morning.

I show you a document which you previously testified concerning, namely, PX393, which is a handwritten schedule which you prepared on or about May 23, 1973. Mr. Craco asked you to explain, if you could, the apparent disparity between the amount of projected collections reflected on PX393 and the amount of projected receipts reflected on Page 6 of PX6, particularly with regard, or specifically with regard to the month of May.

I ask whether your ability to explain

* * * *

Rose - cross (Klein)

Mr. Waldman with respect to the eligibility formula that you can tell us about at this time?

A Nothing specific, no.

Q What can you tell us in general as to the dealings you had with him with respect to the eligibility formula?

A Well, I really didn't have much dealings with Mr. Waldman except as it related to meetings that would be held with Mr. Orenstein, and generally Mr. Downs and myself would go in.

Q When you said in response to Mr. Bicks' question that First National City Bank controlled your growth, what did you mean?

A Well, they were financing the company. We were on a totally secured basis; therefore, by restricting our availability of funds through their determination of eligibility -- which they had the power to determine at any time -- they were capable of affecting the amount of funds we had to finance the business.

Q And with respect to First National City Bank's control of your financing, what did you mean?

A Well, what I meant by that is that they

Rose - cross (Klein)

could, by restricting funds at any given time, really affect the viability of the company. You could argue with them that the funds were available, but that really doesn't do you much good if you have been placed in a temporary crunch, cash crunch, because you haven't made payments which are critical, and that's really what I meant.

Q Was there any instance in 1968, 1969 or 1970 or 1971 where the actions of First National City Bank did put Topper in some kind of crunch?

A On a number of occasions.

Q All right. Can you tell us specifically what you recollect with respect to any of those occasions?

A Nothing specifically, simply that from time to time we would have problems because of the fact that our eligibility calculations didn't agree with what they suddenly would say were their eligibility calculations.

It was not a question of the fact that we would suddenly go out of balance, but rather we would continually find that any differences came from some period prior to that -- but we had not

* * * *

Rose - recross (Bamford)

were those honest errors?

MR. FITZGERALD: I really think that calls for a legal conclusion.

BY MS. BAMFORD:

Q Was it your impression that these errors were inadvertent?

A I am sure they were not deliberately made.

Q Was it your impression that apart from the effect which City Bank's determination of eligibility might have on your particular cash needs at the time, apart from that effect, that City Bank was honestly trying to be consistent in its methods of computing eligibility under its formulas?

MS. BAMFORD: Do you want to read that question.

(Question read.)

BY THE WITNESS:

A I could only answer that by saying I never questioned -- it never occurred to me that they were being deliberately dishonest. I don't know what else to say.

BY MS. BAMFORD:

Q Was it your impression that City Bank was

Rose - recross (Bamford)

attempting to apply its formula computations consistently --

A No.

Q Let me finish my question. -- regardless of the effect that that application might have on your particular cash needs?

A No, because they controlled the formula, so to suggest that they -- since they controlled the formula and since the only place we could draw the cash to handle our operating needs was from the bank, then I can't say that they could not control that by changing that formula any time they wanted to.

And changing the formula doesn't mean 80 percent. It means that they could declare ineligible any receivable they wanted at any time.

Q Apart from their technical ability under the contract to make determinations of eligibility and to make changes in the formula, did City Bank, in fact, arbitrarily make changes, or was it your impression -- all right, I will stop. I guess it will be two parts otherwise.

A To answer question one, arbitrarily, yes, with Globe Wholesale was?

A Only to the extent that it's outlined in these exhibits.

Q Are you referring to Plaintiffs' Exhibit 1103, 1104 and 1105?

A Yes.

Q Did you receive copies of these documents on or about the date they were written?

A Yes.

Q I call your attention to Plaintiffs' Exhibit 1103, particularly the second paragraph, which reads:

> "One disturbing piece of information that was brought to light was that Sandy Obolsky had issued credits for merchandise that we have not received as of today and did not issue credits for merchandise that Globe had returned during 1971. I don't know at this point how many other accounts were handled in this manner."

Does the portion of Plaintiffs' Exhibit 1103 which I just read refer to another example of Topper having failed to record a credit which one of its officers had agreed to with a customer on a timely basis?

A Yes.

Q I believe your testimony was that you did not know how many instances this practice occurred?

A Yes.

Q Do you presently recall Topper issuing any credits to customers other than the ones we have just covered, based on the fact that the customer had already been granted a credit at some prior time but that that credit had not been reflected on Topper's books?

A Yes.

Q Do you recall which ones?

A This was true in so many cases that it's difficult for me to be specific.

Q Could you tell us during what time period Topper had agreed to issue the customers credit which were ultimately part of the settlements in 1972?

A I'm afraid I can't be specific.

Q Based on your work in connection with Topper's accounts receivable, did you learn that credits had been issued in 1970 but not recorded at that time?

A It was not my responsibility to ascertain the date that a credit was allowed, only to see that a credit was eventually recorded.

Q Yes, I understand that.

During the course of this process, did you learn that credits had been issued or granted to sale account. * * * *

Q Does the schedule indicate the various reasons for which credits were issued?

A Yes.

Q What does the third item which reads:

> "Trans-shipments to other Topper customers,"

refer to?

A On many occasions, Topper requested a wholesaler to take merchandise from their inventory and shipped to other Topper customers in the area. As a result of this transfer, the shipping customer was entitled to a credit and then Topper would produce an invoice billing the second customer for the merchandise.

Q Do you know whether the credit of, I guess it's approximately $85,000 which Topper issued to Globe Wholesale on May 19, 1972 and which related to the "trans-shipment of merchandise to other Topper customers," do you know whether that was issued on a timely basis?

A No, it was not.

Q In other words, Topper had owed this customer $85,000, but had not reflected this on its own books?

A Yes.

Q Did this cause Topper's accounts receivable to be overstated?

A Yes, sir.

Q I call your attention to the item which says:

"1971 Toy Fair credit,"

which is approximately $23,000.

Does this indicate that not until May 19, 1972 was this customer granted--not until this date Topper's books reflected a credit which had been granted in 1971 at the Toy Fair?

A Correct.

Q I call your attention to Plaintiffs' Exhibit 1105, particularly the third page, the third and fourth pages thereof,which is a letter from Mr. Soren of Globe Wholesale Company to Mr. Clarke of Topper.

Does this letter indicate that after this account was reconciled, Topper wound up owing Globe Wholesale $165,000?

A Yes, sir.

Q Do you know how Topper disposed or paid this to Globe Wholesale?

A By shipping merchandise.

Q In the amount of $165,000?

A Yes, sir.

* * * *

with different customers, I prepared this analysis which lists the total credits which were issued as a result of the settlements and the reasons why these amounts were issued.

Q Could you take us through each of the column headings and explain what reasons those headings stand for?

A Yes.

In the column after "Settlement Adjustment," we have a title, "Exchange Program-Merchandise Not Returned To Customer". Under the exchange program, customers returned certain merchandise with privileges to obtain similar merchandise in other styles, color combinations, etc. In many cases, customers returned merchandise under this program and credits were never issued.

The credits in this column refer to--I've already explained that. For example Vornado shows a credit of $124,000. Apparently, they had returned merchandise under this program and never received a credit and, therefore, we were granting them this amount.

Q Do you know after they returned the merchandise whether they were shipped any other merchandise in exchange for that?

A In some cases, customers were shipped exchange merchandise and were billed accordingly for it, while not receiving credit for the merchandise they returned.

Q I see.

A In other instances, customers had returned merchandise and were never shipped additional product and, therefore, were entitled to a credit.

Q What does the second column refer to?

A In general --

Q Excuse me. It's the third column over, but it's the second in terms of reasons.

A The third column is "Merchandise Returned--Credit Never Issued".

In general, customers were returning merchandise after receiving authorization from Topper and were entitled to a credit against their accounts receivable balance.

Q Let me just interject with one question.

For what period does--to what period does this schedule relate?

MR. FISKE: You mean in terms --

MR. DAILEY: Of when the transactions

which are summarized took place.

A The adjustments related to transactions over a period of time. I couldn't give you a specific date on each transaction.

Q I believe you were explaining the third column.

A For example, with Interstate, they had returned merchandise valued at $197,000 and never received any credit.

Q Do you know when the merchandise was returned from Interstate?

A Not specifically.

Q What does the fourth column refer to?

A "Special Advertising Allowances." This represents grants by the Topper people to a customer to reimburse them for advertising Topper products in their local markets.

Q Is this another instance where the customer had been granted an allowance but a credit had not been issued?

A Yes.

Q What's the next column?

A "Cash Discounts." In accordance with Topper's invoice terms, customers were entitled to take cash discounts. In some cases, customers had taken discounts which were disallowed by Topper. At the time of settlement, it was determined that the customer was actually entitled to that discount and, therefore, a credit was issued.

Q What does the next column refer to?

A "Mark-Downs."

Q What's the purpose of "Mark-Downs"?

A Several customers were issued mark-downs in order to relieve their heavy inventory positions. Credits were authorized by Topper personnel but never recorded on the books.

Q Was a mark-down issued to assist a customer in selling merchandise?

A Yes.

Q What is the next column?

A "New York Terminal Warehouse Returns."

Q Is this the amount of unshipped merchandise which a customer had in the warehouse or is it something else?

A Yes, with reference to these customers.

Q And the next column?

A Related to the New York terminal returns.

You asked before why these returns were

A Well, in the normal course of business, it was not unusual to call the bank. And normally the contact at the bank was Mr. Morty Siegel. And calls were made either through me, Sandy Obolsky or some other designated person on the Topper financial staff, to advise him how much billing was going out for that day, how much credit memos were issued, what the available net receivables were, for the purpose of the bank advancing additional funds against those receivables prior to their receiving the paperwork. And the paperwork was sent by courier each day to the bank.

Q Was the bank advised from time to time about payment experience on accounts receivable?

A The bank received records from the company as to the payments, and they received agings which reflected the current status of all the receivables of the company.

Q Were these documents that you have described, these records and agings, prepared especially for the bank or were they part of the management flow of Topper?

A In, during the normal course of business, they were for both Topper and the bank. And at the end of 1971, the bank requested these runs be done on a much more frequent basis; and they also requested copies of the accounts receivable tapes.

(Hayden Stone Exhibit 1 marked for identification.)

MR. CRACO: May the record indicate at this point, subject to your confirmation, Mr. Dailey, that Hayden Stone Sieff Exhibit Number 1, first page, is the same as Plaintiffs' Exhibit 1049?

MR. DAILEY: That is true.

MR. CRACO: And that the balance of the exhibit were materials that were attached to that first page but were not marked as a part of Exhibit 1049?

MR. DAILEY: That's true.

Q (By Mr. Craco) Now when this request was received what was done with it?

A It appears it was turned over to our accounts payable department to verify the purchase orders.

Q Is that the normal procedure that was adopted at the time by S & M in connection with receipt of and processing of audit confirmation requests?

A True.

Q And were you consulted concerning the response to the confirmation?

A No.

Q I draw your attention to the language written at the bottom of the first page of Exhibit 1 for identification, which indicates "The invoices are correct, not the debits. Our buyer is to discuss this with Topper at the toy show." Do you know what the basis of the statement that the invoices attached to the request were correct was?

A That means whatever was attached to here probably were correct and that --

Q Do you know what the basis of the statement "not the debits" was?

A I don't know, but I would have to guess that there still must have been further negotiations and that the debits were not completed by Topper after we had set them up until that date.

Q These were debits then that had been previously negotiated and were in the works but simply had not been reflected by the papers that were attached to the request?

A Well, they also would reflect the fact that they hadn't been completed by Topper and therefore Topper had an obligation to us and we were not satisfied, nor were we verifying it.

Q Would you tell us what was meant by the sentence, "Our buyer is to discuss this with Topper at the toy show"?

A That would mean the fact that we probably were willing as far as Topper is concerned to wait it out and finalize -- and get it all final and done satisfactorily at the toy show.

Q And who was the buyer to which reference was made?

A Chuck Sieff.

Q Did you discuss with Mr. Sieff the discussions that he was to have at the toy show with respect to the accuracy of the debits?

A We always discussed the complete Topper situation prior to going to the toy show.

Q Carrying your mind back to 1971 and to the evening of the show, shortly thereafter did you discuss with your cousin what position you ought to take with respect to the debits about which there had been an exception taken in the Arthur Young confirmation?

A I cannot remember that, but I am sure that we had no reason to believe that they wouldn't be taken care of satisfactorily.

Q And with whom at Topper were such discussions to be undertaken at the toy show?

A They were always undertaken with Henry Orenstein.

Q Besides this request for confirmation do you recall

S & M's having received any other communications with respect to the state of this account as of the end of December 31, 1970?

A No.

Q Now attached to Exhibit Sieff 1 for identification, and it's the fifth page after the covering letter, appears an invoice, and on the copy that I have the invoice number isn't complete, but it appears to begin with 1657, and then the number is indistinct. It's for a total of some one hundred fifty-three thousand eight hundred some odd dollars. I show you that invoice and ask you whether that is the invoice generated in connection with the transaction you entered into at the end of December of 1970 as to which you testified this morning?

A It appears to be it.

Q In response to the Arthur Young request for confirmation on the status of your account did S & M bring to the attention of Arthur Young that the transaction reflected by that invoice was, that is, as far as S & M understood, a guaranteed sale?

A I doubt it.

Q Did you draw to the attention of Arthur Young yourself any qualifications or exceptions with regard to that sale which would have brought to Arthur Young's attention your belief that all of the merchandise reflected by that invoice was subject to return for one hundred percent credit?

A I never saw it.

Q Did you bring any such thing to the attention of Arthur Young?

A I never saw it. I never received a communication from Arthur Young and therefore I had no reason to answer Arthur Young.

Q Whether or not you had reason, the answer is, no, you did not?

A No.

Q And do you know whether anybody else at S & M did so?

A No, I don't.

Q Do you have any reason to believe that they did?

A I don't have any reason to believe they did, other than the fact that the invoices still bore the condition, some condition of sale.

Q What invoice brought--

A The original purchase order bore a condition of sale.

Q Do you make a distinction between an invoice and a purchase order?

A I made a mistake. It should have been a purchase order.

Q You are referring to Exhibit 1260 which I showed you before?

A I don't recall the number.

Q I show you --

A That's true.

Q In response to Arthur Young's request for confirmation of the condition of the account between S & M and Topper, did anybody at S & M draw to the attention of Arthur Young S & M's belief that the substantial transaction at the end of December, 1970, constituted a guaranteed sale?

A I would have to ask other people to find out.

Q Do you have as you sit here any knowledge that anybody did do so?

A I do not, but I could find out.

Q All right, who would you ask?

A I would ask my cousin Chuck Sieff.

Q Would you do so now?

A We will have to take a short recess.

(Brief recess.)

Q (By Mr. Craco) I think the record should indicate that in our presence you have made a telephone call to your cousin and discussed the handling of the transaction at the end of 1970 both from the standpoint of the terms of the transaction and the payment for the transaction, and the disclosure, if any, to Arthur Young of the terms. Would you tell us what you learned as a result of that conversation?

A I refreshed my memory very well, and the transaction was as stated, that we were not to have to take any of the merchandise out of the warehouse unless we wanted it. While we were in Hong Kong, or over in the Orient purchasing toys, our general operations manager, Mr. Roger Nelson, paid this bill. It was a discounted bill and we anticipated.

Q When you say you anticipated, what do you mean?

A Well, there was an anticipation discount, so obviously we took the anticipation discount from the due date of August back until January or February, and I believe Topper's records will show that we did. I recall this very well now. And then we fought all year to get this thing settled and get -- and then we finally had to take a credit against that merchandise, which we didn't use, and to use it on other Topper merchandise, which is just exactly how it happened, and it was a very displeasing situation to this whole operation for many months. And as far as this is concerned, this really probably wasn't seen by anybody of any importance here.

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Q Referring to the request for confirmation?

A The 1049 exhibit.

Q And is it fair to say, based on your recollection as refreshed, that the conditions that you would not have to pay for the merchandise unless you drew it out of the warehouse never were brought to the attention of Arthur Young so far as you or your cousin recalls?

A I am sure it was not brought to Arthur Young, and I am also -- was very unhappy that we ever paid for an advance of a very critical situation such as this.

Q So let me see if I understand the situation as the early part of 1971 progressed. Do I understand your testimony to be that the transaction was, as you have stated it, that the terms were not brought to the attention of Arthur Young in response to the confirmation, for whatever reason that may have been, that the full bill, less a discount for --

A I think the reasons that, for whatever reasons might have been, are important enough reasons to say that the people in charge here were gone.

Q All right.

A And those are good enough reasons to start with.

Q I don't mean to cast any aspersions.

A I am just telling you.

Q Wasn't brought to the attention of Arthur Young, that

A Yes, sir.

Q You refer to an anticipation of an increase in the past dues which occur at the end of July?

A I believe the English is a little incorrect.

Q I am sorry, I may have misread it.

A Will occur, which will occur, I assume that is what it should be.

Yes?

Q Can you explain what you meant by that?

This memo is dated July 15th. You're talking about will occur in the next two weeks.

A Or three weeks, four weeks.

My memorandum, it appears in consideration of Topper's needs for funds during the next three-week period is what I think it encompasses, that we should have an over advance position of $3,000,000 due to their normal requirements, plus an increase in the past due, which I anticipated.

Q What was the basis for your anticipation of that increase in past dues?

A I would have to conjecturize insofar as what I recall specifically occurring in that time, is the lack of collections --

Q But the lack of collection, was that discussed at the meeting, do you remember, or was that based -- was your knowledge of that lack of collections based on other records, other sources?

A I believe it was a combination.

Q May I call your attention to the last paragraph which refers to preparing letters outlining these temporary increases.

Did you prepare such letters?

A I don't recall whether I prepared them or whether Al Lusk prepared them. I think one of the two of us prepared them.

MR. BICKS: Would you mark that, please, Plaintiffs' Exhibit 543 for identification?

(Document below described was marked as Plaintiffs' Exhibit 543 for identification, this date.)

Q I show you a document marked Plaintiffs' Exhibit 543 which appears to be a letter bearing the date July 15, 1971 addressed to Manufacturers Hanover and to Topper which appears to bear under the legend "Acknowledged and Agreed," signatures on behalf of Manufacturers Hanover and Topper, which letter appears to have been sent by First National City Bank.

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Q Is that letter referred to in your July 15th memorandum?

A It appears to be. I can't be sure about the sequence.

Q Your memo was written July 15th.

A Right.

Q That letter bears the date July 20th.

A Right.

Q Does that letter reflect the conclusion wich your memo recommended?

A It would certainly appear to.

Q Do you recall a meeting at the bank with officials of Topper following the meeting to which your July 15th memo referred sometime during the month of August 1971?

A No, I don't recall a specific meeting. Any individual meeting.

Q Do you recall any discussion during the month of August 1971 with officials of Topper?

A I can't recall a specific meeting in August, no, sir.

Q Do you recall any communication with Topper during August of 1971?

A Communication with Topper every day.

* * * *

A Updated attachments.

Q But it would be just updated each day?

A Yes.

Q I think you testified after you became account manager, you had overall on a day-to-day operating basis at least responsibility for the overall credit, not just for the collateral; is that correct?

A That is right.

Q So that after whatever time that was in early '70 or in the spring of '70 when you took over, did projections come to you from Topper, whatever projections were prepared and sent to the bank?

A If there were projections received during that period, I would have seen them, yes.

Q I show you documents previously marked for identification. First Plaintiffs' Exhibit 6 which bears the title "Topper Corporation Preliminary Financial Statement as of December 31, 1970 and Projectin of Operations for the Period December 31, 1971," and ask you if you can remember receiving that.

Would you look at it and see?

A I know I got '71 projections. I don't know if these are the same ones I got.

Q Take a look at them.

A You're talking about 1970 -- '71 projections?

Q It seems to be. It says for the year '71.

A These appear to be numbers I saw. It has my handwriting on them.

Q That is why I asked you.

Later on in 1971, did there come a time when revised projections were prepared? Do you remember that?

A I can't recall that, really.

Q I show you a document previously identified as Plaintiffs' Exhibit 398 with Plaintiffs' Exhibit 7 attached. It's a covering letter with some projections.

Do you remember receiving that?

A I don't really recall this.

Q Who is the letter addressed to?

A Waldman.

Q Would he have sent you that?

A He should have. He probably did.

Q Did he?

A I don't know. I don't recall. Maybe if I saw in the form in which they were actually received, maybe I can recall.

Q That is all we have.

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prepared.

Q What was the purpose for which the advances were prepared by Citibank ~~City Bank~~?

A To determine what the collateral statuses were, to be a guide for what advances were to be made, and the mechanics in which advances were made.

Q These advances were regularly prepared by Citibank ~~City Bank~~, were they?

A They were prepared on the request of the account executive.

Q Each day?

A Not necessarily each day, but at the request of the account executive.

Q I say these documents --

A The documents themselves were prepared daily, automatically.

Q That is what I mean by advances.

A But "prepared" in my sense means whether they are submitted. If they are not submitted, they are destroyed and they are not kept.

Q What do you mean by "submitted"?

A If they are submitted to the account executive at his request, they are marked either for advance or they are marked for records, in which case they are

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mean advance sheet?

Q Is advance sheet the proper terminology?

A Yes.

Q Would that be reflected in the advance sheet for the day, the cash ledger balance?

A Except that the pennies were dropped.

Q With the exception of the dropping of the pennies?

A They reflect the same balances as in the cash ledger.

Q I believe before that you referred to a collateral ledger?

A Right.

Q Would the collateral ledger be reflected in the advance sheet?

A For most clients, yes.

Q For Topper?

A With few exceptions.

Q With few exceptions?

A Yes.

Q So that the advance sheets would reflect the essential results of all daily records with regard to the Topper account?

A That's correct.

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A Yes, sir.

Q Did the figures you gave me include, on the appropriate day, the $7 million received from the Ford Motor Credit Financing?

A It appears that way.

Q Similarly, did the same figures in September, on the appropriate day, include the $5.25 million received from the private placement at issue in this litigation?

A I don't recall if that was a private placement, but it appears that we have received substantially that amount in September.

Q The 7 million plus the 5.25?

A If that is the private placement figure, then that is what we have received.

Q And those figures were included in the total sum that you gave me?

A Yes, sir.

Q I hand you, Mr.Siegel, Plaintiffs' Exhibit 621, about which you previously testified and identified as, I believe, ~~City Bank~~ Citibank advance sheet bearing the date August 26, 1971. I hand that exhibit, Plaintiffs' Exhibit 621, to you, and ask you, was an advance made that day?

A Yes, sir.

Q Do Mr. Waldman's initials appear as approving that advance?

A Yes, sir.

Q I hand you, Mr. Siegel, again Plaintiffs' Exhibit 622, which appears to be ~~City Bank~~ Citibank's advance sheet bearing the date August 27, 1971, again an exhibit about which you have already testified.

I ask, was an advance made that day?

A August 28th?

Q Yes.

A Not the 27th?

Q That's right. I have given you the one that was August 27th.

A That was the 26th, and this is the 27th, but the advance was made on the 28th.

Now, what is your question?

Q Was an advance made that day?

A Yes.

Q Do Mr. Waldman's initials appear approving that advance?

A Yes.

Q Mr. Siegel, are you familiar with a document denominated participant's participation

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any one point in time?

A Any one point in time.

Q At no point in time during the period February through March, you were allowed, authorized to allow the client's advances to get above 1.23 million in excess of the formula, right?

A That is not true.

Q Is that what it means?

A That is what it says, but that is not what it means.

Q What does it mean?

A It means that for the Accounting Department's purposes advance instructions were permitted to have that type of overadvance without any additional approvals.

Q So you were authorized to do this without anybody else's approval?

A Right.

Q If you were going above this during February and March, you had to get somebody else's approval?

A Right.

Q Whose?

A Mr. Waldman and Mr. Lusk.

Q The two of them?

A Or.

Q The same at any time during the month of April if it went above a million?

A Yes.

Q 750,000 in May?

A Right.

Q 500,000 in June thereafter; how long was the thereafter meant to go? Through the life of this agreement, through January 1972?

A That is what it says, yes.

Q Why the decrease from April through June and thereafter?

A Based on needs.

Q How would you know their needs except by projections?

A Discussions with the client.

I call your attention to the handwritten notation following advance privileges. Whose handwriting is that?

A Mr. Waldman's.

Q What does it say?

A These figures include the $500,000 temporary overadvance during any given month to be made up before

Siegel SEC

in the form it says this is not subject to any right of return, offset, or consignment, or what have you.

Q Did you ever ask anyone at Topper to contact customers requesting that they respond to that confirmation request?

A I did have conversations with Sandy Obolski. I know Sandy because he is the only one I spoke to about it, about a couple exceptions. He gave me what I considered a justifiable answer.

Q What was the nature of those exceptions?

A I don't remember. Where a customer would say I got a damaged merchandise, I have a credit coming, or this is not true, or whatever answer. They come in a million different forms.

Q Did you ever ask Obolski to contact the customers or have other people at Topper to contact customers to get them to fill out and return these forms?

A No.

Q All right.

Did you ever receive a copy of a Topper Corporation prospectus dated April 29, 1971?

A I think so.

Q When did you receive that?

A I don't remember. Maybe April.

Q Did you receive a copy of a prospectus prior to the time of the public offering?

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A I believe so.

Q Did you have any discussions with anyone at Topper concerning that prospectus?

A No.

Q Or items disclosed or not disclosed in it?

A Not to my knowledge.

Q Did you make any suggestions for disclosures that might be contained in the prospectus?

A No.

Q Did you talk to anyone other than Obolski about it?

A No. About the prospectus?

Q Yes.

A No, I didn't speak to Obolski about the prospectus.

Q Who did you speak to about it?

A Lusk.

Q What was the substance of your conversation with Lusk?

A Just general conversation.

Q Could you relate the substance of it?

A I can't.

Q The topics discussed?

A The only thing that sticks in my mind is probably the preamble, this is a risky stock. That's about all I can remember about it.

Q Do you know whether the redating practice was

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means. I'm not sure I understand what that means.

Q Did you have any discussions with anyone at Topper?

A We were not unhappy with the amount of the loan, no, sir.

Q In April of 1971.

A Maybe certain over-advances where we -- if I remember one of the memorandums you showed me Mr. Lusk makes mention of paying back out of sales or with stock offering at their suggestion. But we don't as a rule -- as a matter of fact, I never remember ever making any advances as a bridge loan. This is not the bank's policy at all.

A Is that a term of common use at the bank? Bridge loans?

A I think it is a common term used in the finance industry.

Q What is the meaning?

A I bridge the time. In other words, when somebody has -- let's say he builds some property and he is going to get insurance money. Banks make loans to bridge the time to get the insurance proceeds. Some people make loans against stock offerings. We don't.

Q Is there some particular reason why the bank would have a policy against that?

A Because we know that the chances of that being -- it is not a collateral, it has no value to us whatsoever. There is

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umbrella. Obviously they were trying to collect it from the impressions they gave us.

They experienced some difficulties. We would have preferred they got their funds on these collections rather than come to us for over-advances for any reasons -- regardless of whether we thought it was sound or not.

Q Was the makeup of the 6.6 million referred to in the memorandum?

A Makeup?

Q What particular receivables were those?

A Quite a few. Mostly under the bill and hold.

Q They were primarily the December, 1970, receivables?

A I wouldn't say that..

Q Was this figure made up primarily of the May, 1971, figure?

A I would assume that.

Q Did the company indicate they were having particular difficulty collecting the May, 1971, portion of the extended term receivables?

A I believe that was the case. I don't know whether they particularly described it as such.

Q Well, did they give a reason for the lack of collection of those particular receivables as opposed to the other receivables?

A I think it was those receivables in particular where the customers were not able to call it in as fast as they wanted to and were not able to sell it as fast as they hoped to.

Q Is that a different reason from the reason for the failure to collect other receivables?

A I believe it is the same reason. In my opinion there was very few in the way of Topper receivables that were not paid because of lack of funds other than the distributors who overbought and were unable to dispose of them as fast as they hoped to.

Q Directing your attention to the third page of the exhibit, which would appear to be a memorandum by Mr. Waldman to Contract File dated June 21, 1971, have you seen this before today's date?

A Yes, my initials are on it.

Q Do you recall when you saw it?

A It must have been around that date. Here's 6/24 I wrote.

Q Did Mr. Waldman discuss this memorandum with you at any time?

A I don't think so other than maybe the other day.

Q Did he indicate to you why he had agreed to provide a $2,000,000 increase in credit?

A As a rule Mr. Waldman very rarely rationalizes his decisions with me.

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was "more professionally managed company", the institution of various forms of computerized reports?

A Yes.

Q Did you regard that as important in terms of the precautions that you were discussing?

A We always discussed the control system that the company had.

Q Apart from what you always do, in this particular context did you think that the existence of those control reports, computerized control reports--and I will take you through them in detail later--constituted a significant precaution as you used the word against the sort of difficulty you envisioned in Item 1?

A They were part of the company's attempt to be more professionally operated.

Q Did you regard it as an important part?

A Yes.

Q Item 7, as I read it, says "Info informal arrangements return"?

A Yes.

Q Though there is no question mark, I gather this was a subject you wished to discuss with him?

A Yes.

Q And by your statement it was simply a topic you wanted to discuss; you didn't know it existed?

A We had gotten an impression that there were pressures on the part of customers for return in the toy business and, of course, the company has returns. We have ascertained that there were no requirements, it was not part of the company's operations to allow returns. We were questioning whether there were informal arrangements, and Mr. Orenstein was quite emphatic in saying in both offerings that they were not.

Q I realize that both of them were in a sense merged together in your mind, but to the extent you can, can we focus on each separately. If you can't, obviously say so.

A There was a particular topic that we covered with a number of people in each offering.

Q Did I understand you to say in connection with both offerings Mr. Orenstein specifically assured you there were no informal arrangements with regard to returns?

A That is correct. He indicated to us that any returns were totally at the option of Topper Corporation.

Q Without picking you up on words, I am particularly interested in what he said to you and what you can testify about because you heard. If somebody else was present with you, obviously your reference is accurate. But focusing if you will only on what he said in your presence, would your answer be the same as you have just given?

A Yes.

Q With regard to the period preceding I think you said the '70 and '71 public offerings?

A Yes. It was during this particular discussion with him we discussed, or the discussions prior to the 1970 offering, we discussed the returns that he had instigated at Topper Corporation's option for the exchange program for the old cars that were outstanding.

I will go through that if you would like, but I'm sure everyone here is familiar with that.

Q Why don't you just briefly. I'm not sure I do. Do you understand what he means, Mr. Phillips?

MR. PHILLIPS: Yes.

Q I'm not sure.

A There was a product called Johnny Lightning. They supplied the small cars that ran around a plastic track. At the end of the year they had new models of cars.

At Topper Corporation's instigation and their

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own initiative they went to their customers and said, "Look, give us your old cars and we will give you new ones, the new models to sell separately, and we will take back the old ones and put them in our packaged sets."

Q New models to use for the old tracks?

A The tracks were the same. It is like General Motors. They change models every year. So there were some old models still in the stores.

Topper Corporation went to their customers and said, "Why don't you give us your old cars, the old model cars, and we will give you new ones, and we will put the old model cars in our packaged sets."

They did that, the customers were delighted because they got new merchandise on the shelf. It was specifically pointed out to us that this was something that was done at Topper's initiative and not the customers'.

Q Apart from returns at Topper's initiative, was there any other example given to you of such cars, besides the Johnny Lightning?

MR. PHILLIPS: That wasn't return. That was an exchange. He didn't use the word "return". You did.

MR. BICKS: With all due deference, the language isn't, "informal arrangements for return", but however it be characterized was there any other example of exchanges besides that?

A The classic example which they gave us--and please stop me--I'm sure this is all in my prior testimony--but the classic example that Mr. Orenstein and others in the company gave us--

Q Excuse me, sir. Off the record.

(A brief recess was taken.)

A The classic example which Mr. Orenstein and others in the company gave of the policy of not accepting returns was an example with Sears and Roebuck, which was at one time a major customer. Sears had ordered merchandise. They had indicated they no longer wanted us. This was just an order which Topper considered non-cancellable.

Topper then shipped the merchandise even though Sears said they didn't want it because they told Sears that they had ordered it and billed Sears. They collected that bill, and Sears threatened not to do business with them if they went through with that, if they didn't take the stuff back. They refused to do it.

They collected the bill and lost Sears as a customer for several years. This was the example of how things have changed.

Q Was that example that you had in mind when you said, "We were aware that there were pressures from customers" earlier in your testimony?

A I didn't say we were aware. I said we had gotten the impression that in the toy business that there were pressures to accept returns, and from the company's financial statement they had indeed had returns. The question was whether they had any obligation to accept returns or not.

Q Apart from I think you said you had the impression that there were these pressures?

A Yes.

Q Was there any specific example besides this Sears one given to you by Mr. Orenstein or anybody else at Topper?

A Not that I can recall. I do recall that--and this was a point that we discussed with a number of people--and the response from each one was the same, that the company had no obligation to accept returns, and any returns or exchanges were entirely Topper's option.

Q I thought you were talking about something different, that apart from the legal obligation, even though such changes on returns were at their option, that there were customer pressures?

A We had the impression in the toy business this was true.

Q And you had the Sears example?

A No.

Q Given to you by Mr. Orenstein?

A Yes. He gave us this example. The question was here, even though you don't have any legal obligation, do you say informal things to your customers, and the answer was no.

Q Well, that is right, but we have moved beyond item 7 to apart from informal arrangements, what about just competitive pressures to accept returns; that is what I thought you were addressing yourself to, with the impression language you used that you had the impression that there were these pressures by customers apart from arrangements to accept returns or exchanges. Sears was given to you by Mr. Orenstein as an example of that?

A No.

Q You straighten it out.

comparing the aging from year to year.

The company's record of collection of receivables had been excellent. I think somewhere in here later, it is sales of one fifty-two million.

In three years, they had $330,000 only in write-offs. And -- so we were comparing the company's historical record and how old the receivables were, how many receivables were past due.

Q Yes?

A With the receivable situation as it existed at that -- various dates, this date -- the dates on this memorandum are October and December of 1969.

Q I believe there are three months, aren't there, reflected on that?

A Oh, yes, November also.

Q October, November and December?

A Yes.

Q Wasn't it the account receivable summary that Mr. Rose sent you in that letter, or said he sent you?

A The letter also contains a reference to March.

Q May I see that letter again, please?

A Yes (handing document to Mr. Bicks).

Q All right. May I ask you why you picked

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for identification as Plaintiffs' Exhibit 572 which is a Form S-1, Topper Corporation, dated March 29, 1971, and ask you to first look at the "application of proceeds" section.

A (Reading.) Yes?

Q I ask if this is a reference as of that date to a proposed private placement.

A Yes.

Q Can I ask you to look at Note 3, I think it is on Page 32 to the financials, please.

A Yes?

Q Or 34. I'm not sure.

A Yes?

Q Are those figures the same as in the prior draft that you just testified about?

A The figures are fourteen million and two million in that note. In one of the prior drafts, they were fifteen million and two million.

Q It is the only prior draft that we have.

And in the final prospectus, as it became effective, what were the figures?

MR. PHILLIPS: You have already asked him that.

MR. BICKS: Okay. They were the same.

MR. PHILLIPS: Fourteen and two. He already testified to that.

MR. BICKS: All right.

Q Your note "Wow" was on the draft with fifteen and three; is that right?

A Yes.

Q Did you question as to the basis for changing those figures?

A The note "Wow" is directed at the norm -- the relatively large volume of sales in December. The change in that number occurred from that draft to the subsequent draft.

There is some recollection in my mind of changes in reserves, but I'm not sure when that occurred.

Q Did you ask about it?

A We covered the company's -- we discussed the company's reserve position as -- you know -- as one of my list of things to discuss.

Q Yes?

A And when we discussed it, it would have been with relationship to the audited financials which would be the fourteen million and the two million.

Q The fourteen million, the change from fifteen to fourteen, I think it was, you feel was attributable to a change in reserves or a difference in reserves?

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has previously been identified as Plaintiffs' Exhibit 461 which consists of the file as we got it from Hayden Stone.

May I ask you to look at the first page, the first document underneath the cover page.

A Yes?

Q As a matter of fact, I believe there has been --

A Part of my handwritten documents is a list of items requested from the company in the 1971 offering.

Q All right.

MR. BICKS: We just marked the whole file received from Hayden Stone previously. Could we mark the first document as Plaintiffs' Exhibit 461A for identification.

(Document described below was marked as Plaintiffs' Exhibit 461A for identification, this date.)

Q And the second document, what is that?

A Accounts receivable, detailed trial balance.

Q Let's focus on the first.

What is the title of the first document in your file there?

A "Credit Memo and Return Authorization Listing."

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Q What date does that bear?

A January 14, 1971.

Q Would you turn to the last page of that?

A Yes?

Q Under "Net Amount," is that figure seven point two million, seven point two five eight three eight eight one?

A Well, there seems to be two figures here under "Net Amount." One is the seven point twelve and four point eight.

Q Could you explain the difference between those two, please?

A No. Our information regarding the company's returns is generally gotten from -- in summary form, from the financial people of the company.

Q Right.

A This particular stack of financial control material, I believe, was in response to questions of how they controlled returns.

Q I see.

A And Jack Rose is quite proud of the fact that he had his fingers on and approved controls over -- approved returns over certain amounts of money, and this -- I believe that most of this -- most of this material

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A Yes.

Q Is that right?

A Yes.

Q In response to the question, that is the only other document that might have suggested a meeting with Mr. Orenstein that we have?

A Right.

Q Do you recall, apart from the documents, and I am showing you what we have, sir, do you recall any other meeting besides the March 8th one with Mr. Orenstein in connection with your investigation of the public offer?

A I don't take notes at every meeting.

Q Right.

A And in a meeting, I don't take notes of everything that occurs.

Q Right.

A And I'm sure there were additional contacts with Mr. Orenstein during the period.

Q I meant face-to-face meetings.

Do you recall any other face-to-face meeting, subject to the caveat that obviously, these notes don't reflect everything that happened at this meeting?

A I don't recall specific meetings. I do recall being at the Toy Fair. He was there at that time, but it is my feeling that there were probably additional discussions with him.

Q In person?

A Yes.

Q By you?

A Yes.

Q Okay.

A Not of the type where I would sit with him with a list of questions and get a number of responses, but I'm sure that during the course of the preparation of the prospectus, he was consulted with.

Q Okay. I will come back to that after this one, if I may, unless you want to talk about that now?

A No.

Q Back to 574.

A Yes?

Q As you correctly point out, Item 12 did raise the question, "What is the policy on returns?"

A Yes.

Q What was his response to that?

A I think I have indicated his response to that.

Q What was that?

A He indicated that everything is sold on a final

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sale basis (referring to document).

Q And that's all he said?

A I don't recall his exact words other than that. This was a topic that at a previous offering, we discussed at some length and it was a very basic understanding that permeated our relationship with that company, that any returns were entirely at the option of the Topper Corporation.

Q Right. Did you discuss beyond any legal rights to return, the sort of phenomena you touched on yesterday, namely what might be informal pressures, voluntary, rather than any legal obligation to do so? Did that come up at this meeting?

Do you agree those are different issues or do you think it is wrong to separate them?

MR. BICKS: Different questions.

A No, an obligation to return, there is a legal obligation and there can be informal obligations.

I assure you that the intent of our question was very clear in that area.

Q What was it? It covered both?

A Yes.

Q When you use "informal obligation," would that include a judgment that "If we want to keep this customer's good will, we better do it," or do you mean, on the other hand, simply an oral assurance you would do it?

A Would you read that back?

MR. DICKS: Would you?

(The question was read.)

A I mean any obligation in which the company assumed to return sold goods.

Q I fear my question wasn't clear.

Beyond any obligation by way of contract or informal assurance, assume there had been no conversation on the subject of returns between Topper and a particular customer, did your inquiry touch on Topper's attitude in the event a major customer proffered returns and Topper feared loss of that customer's future trade if such returns were not accepted?

A I don't recall whether it was in this discussion or not, but as I have indicated before this, the Sears Roebuck story is continually cropping up to prove that particular point.

The company had made returns in the past and the assumption was that these returns were made as a business judgment. I do recall a discussion over

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damaged goods.

Q Apart from damaged goods?

A I no longer know what your question is.

Q You were starting to, I thought, elaborate on the nature of the response you secured to your question generally about returns as a matter of Tepper's business judgment.

I was saying, exclude damaged returns for damaged goods.

What was the response apart from that?

And you were giving it, I believe.

Had you finished?

A I'm embarrassed to say that I have lost the trend of the discussion.

Q Okay. Apart from the Sears example, did Mr. Orenstein say anything as to what the company's present attitude would be in the event that apart from any obligation to accept returns, a major customer offered returns and asked for it?

A Other than the fact that all sales were on a final basis and any return was totally at the option of Tepper Corporation, and each return was just decided on a business basis, I don't feel that I can respond any more to your question.

days to receive a 2 per cent discount; is that correct?

A Yes, but I do recall in some of my notes that there was a discount structure. I just don't remember what it was.

Q Did you look at the original invoices to review the terms?

A There is some confusion on my part between the 1970 and 1971 offering and what I did in each one. I believe that in this offering, we looked at the invoices and the purchase orders.

Q For the 1971 offering?

A No, 1970.

Q How about the 1971 offering, did you do the same?

A We were particularly concerned in both offerings with datings and the problem of guaranteed sales, and we looked at both of those areas.

Q We will get to that area in a few moments.

My question is, did you look at the face of the invoices, the larger invoices of Topper Corporation, in preparation of the 1971 prospectus?

A No. We looked at the form of the invoices and relied upon Arthur Young to tabulate them and make sure the financials were correct.

Q Well, in the commentary part of a prospectus, you would, I believe, have to disclose the normal terms of the corporation, is that correct, how they conducted their business?

A I am not sure that we always do that.

Q Well, if there was an item for return or exchange--

A We would say it.

Q Well, how could you be sure without looking at the face of the invoices or correspondence between the company and its customers?

A We checked Arthur Young, and we looked at the form of the invoice. We looked at a couple of invoices, which had no return privileges on it, and we asked, almost without exception, everyone we talked to, whether the company had any return privileges to their clients. This, as you can see in there, was something which was mentioned for the problems in 1966 and 1967, and we made every effort to be doubly sure that there were no return obligations on the part of the company, and we were assured by every person we spoke with.

Q Did you make any independent inquiry regarding this topic with the customers, whether they had those rights?

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A I don't remember.

BY MR. SCHATZ:

Q The type of contract you mentioned is generally referred to as a "sale and return sale." It is a species of contract by which the seller, usually a manufacturer or wholesaler, delivers a quantity of goods to the buyer, on the understanding that if the buyer should desire to retain or use or resell any portion of such goods, he will consider such part as having been sold to him and will pay their price, and the balance he will return to the seller, or hold them subject to his order.

Did you discuss this with Topper Corporation?

A As I said, we were very concerned with the existence of any return privileges, because that was part of the reason for the earlier losses.

Q And what were you told?

A We asked all members of management we spoke with, and we asked Arthur Young, who had been through all the invoices, and the Arthur Young people had been with the account for a long time.

We were told, without any hedging at all, that there were absolutely no return obligations on the part of Topper Corporation.

BY MR. SHUKOVSKY:

Q You have used the word "obligations." Can you please describe why you use that term rather than "privilege"?

MR. FRANKHAUSER: I am not sure he was finished with his answer. Please let him finish his answer.

MR. SHUKOVSKY: Off the record.

(Discussion off the record.)

MR. FRANKHAUSER: May I consult with the client?

MR. SHUKOVSKY: Yes. Let the record so reflect.

A I use the term because, in asking these questions, Henry Orenstein had said that in the early part of the year they had, at their own instigation, gone to several customers and said, "You have old Johnny Lightning cars. We will trade you new cars for old cars and we will put the old cars in the sets, the package sets which we are selling. Then, you will have new cars for your shelf."

They had no obligation to do it. They did it to cement relationships with their customers.

Q When you are talking about questioning the officers regarding return privileges, did you also question them regarding exchange privileges?

A Yes.

Q Extensively?

A Anything they did -- and we went over this time and time again with the members of management and with the accountants, and at these prospectus meetings -- was at their own option.

This car exchange was at the company's option as a competitive tool.

BY MR. SCHATZ:

Q Did you discuss sales on credit?

A I don't remember. We discussed the terms during this offering, if that is what you mean by sales on credit.

Q I don't understand your response. Would you amplify it?

A Well, all sales were billed.

Q So that sales of Topper toys were booked and shipments were not necessarily made at the time the sale was entered into, or where payment of the price was immediately made; is that correct?

A I am unaware of any sales where shipment was not made.

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contained in the April 1971 offering regarding extended-term sales.

A I don't believe that in the over-all picture -- I am not sure it was brought to our attention. I don't believe in the over-all picture that the $2 million is as relevant to sales or receivables as the $14 million was.

BY MR. SCHATZ:

Q Is it a fair statement to say that it is probable that during your inquiry in connection with the preparation of the prospectus and the S-1 registration statement for the offering which became effective June 3, 1970, that you and your associate were not informed by the Topper Corporation of this extended-term program and the $2 million of sales under those sales which carried extended terms of five to eight months?

A That is possible.

Q Referring again to the prospectus of April 23, 1971, which offered 750,000 shares of Topper Corporation stock, can you tell me the price of the offering?

A The price was $10.50 per share.

Q How was the price arrived at?

A The price was a price which was effected by the market price of the stock, but, there again, the analysis

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of comparative prices of toy stocks with relationship to earnings capacity, asset value, financial strength, which all goes into the pricing decision. There again, it is a negotiated price between the company and the underwriter.

Q In between the first public offering and the public offering represented by the prospectus before you, were there any significant events which occurred with respect to Topper Corporation?

A Well, of course, immediately after the first offering, there was the injection of capital. At the end of 1970, the success of Dawn had been established. At the time of the offering, the company was enthusiastic about Dawn and had orders, but by the time of the extended offering that product had exceeded the company's expectations.

Q Can you explain why the Dawn line was not disclosed in the earlier prospectus of June 3, 1970?

A It is mentioned in it. The substantial shipments had not occurred.

They were making it in Japan, and since no shipments had occurred, we thought we would mention it, but the fact that it has to (one) be bought by the stores and, (two) be sold out of the stores, we thought it was

MR. SHUKOVSKY: Well, it would be available from Arthur Young & Company, would it not?

MR. FRANKHAUSER: I don't know whether it would or not.

MR. SHUKOVSKY: If you will request a document from the original party and indicate to us whether the party wishes the Exchange to disclose these records to you, we will be pleased to disclose such records to you.

(Discussion off the record.)

BY MR. SHUKOVSKY:

Q Returning once again, Mr. Sterrett, to Berlind Exhibit 24, I ask you what steps you took to determine whether there was any "likelihood of return" of the merchandise included in December 1970 sales, which amounted to approximately $14 million?

A At the time of the first offering, we had gone up and down the line, hammering home the point about there is no return on this merchandise, and got answers that were a hundred per cent negative, meaning the people couldn't return any merchandise that is billed and accepted.

The personnel in the second offering were substantially the same. We went up and down the line, but not so far this time, but we had done it before and nothing changed. I asked this question -- I can't tell you how many times -- in prospectus meetings, out of prospectus meetings.

Q Did you contact any of the customers of Topper Corporation to find out if the customer, in fact, had a right of exchange or return?

A I did not. In the initial offering, I spoke with Mr. Saypol of Lionel, who was previously a director. I discussed it with him.

After that discussion, as part of these notes which I will give you, which you have, I asked Mr. Weill to ask Mr. Orenstein.

One of the questions had to do with returns, and it was stated in a most annoying manner in order to make him angry, if that were part of what his company did.

He once again reaffirmed that there were no returns which were allowed to his customers.

The company further said that Arthur Young certifies these sales. They have gone through this with the customers and, of course, they are reluctant to have their customers contacted.

Q I now show you fourteen letters dated

(A portion of the record was read back by the reporter, as requested.)

BY MR. LILLIE:

Q Would you explain your response to that question?

A If the company had not performed well and its receivables were not in good shape, and that there had been problems that had come out in these audits, the bank would take that into account in setting the interest rate on the loan.

Q What did Mr. Waldman state in response to your question relating to the performance of the audits?

A I asked Mr. Waldman how Topper had performed in the audits and he indicated that Topper had performed well in the audits, and that there were no problems.

I asked him whether the company's controls had shown to be good in these audits, and he indicated that yes, they had.

Q Had someone told you prior to calling Mr. Waldman how frequently audits were done of Topper?

A Well, I knew from my visit to the plant that they were done quite frequently, within a month or two, and that the bank and Mr. Rose worked quite closely together.

Q Did you inquire of Mr. Waldman how frequently the audits took place?

A I did not.

√Q What next did you then say to Mr. Waldman, if anything?

A The next question, I remember very vividly, it was, are there any current problems in Topper?

Mr. Waldman responded with one word, no.

I paused to let him add anything that he might want to add, and he didn't add anything.

The question after that, do you anticipate any problems in Topper?

Q Did you not ask Mr. Waldman whether there had been any problems in Topper?

A I did not.

Q You next asked him whether he anticipated any problems with Topper, is that correct?

A That is correct.

Again he replied no. One word. I paused and in case he wanted to add anything to it. He did not make any qualifications.

So then -- I am distinct on this because in dictating the memo I had these two questions with the one-word answers, and I had remember pausing to see if he wanted to add anything to his statement, or in any way qualify it, and he did not.

Q What did you then say to Mr. Waldman?

A I asked next as to whether his division had had any experience with reference to investing in the toy industry and how he would rate Topper's management if they had.

That was not the exact question, but that was in essence what I said.

Q That is essentially two questions, is it not?

A It is essentially two questions.

Q Did you ask it in that fashion?

A No, I did not. I broke it up.

Q So, would you then state more exactly what you then said to Mr. Waldman?

A My recollection on this is such that I asked Mr. Waldman if his organization had had any experience with regard to investing in the toy business, and he replied that it had.

I next asked him what the names of the companies were. He said he didn't recall what they were.

My question to him then was: how do you rate the Topper management of the company with respect to the other investment -- or other toy company managements that you have been dealing with?

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be our first investment in it.

Q What was Mr. Waldman's response?

A He indicated that he was a credit man and this was an investment question. He didn't answer it.

Q Did you follow up that response?

A No.

Q That statement?

A No, I did not.

Q Did you agree with his statement? Did you agree that he was correct in making that statement?

A Would you restate what I was supposed to be agreeing to?

MR. LILLIE: Would you repeat Mr. Thompson's last response?

(The answer referred to was read back by the reporter, as requested.)

MR. LILLIE: I will rephrase the question.

Q Did you just let the matter drop at that point?

A That in effect ended the conversation. I thought his point was well taken. That he --

Q With respect to his being a credit man?

A With respect that we were asking him about the condition of the company from the point of view of the

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Q Do you recall whether you indicated to Mr. Hironomus that you had talked on the phone with Mr. Waldman?

A I do not recall that.

The reference would not be made about Mr. Waldman. It would be made to the bank.

Q You do not recall that?

A I do not recall that.

Q Do you recall what time in the day your phone conversation with Mr. Waldman took place?

A Yes, it was the early afternoon. That would be Friday, August 27th.

Q Do you recall how long the phone conversation took place?

A Approximately fifteen minutes. It might have been somewhat longer than that because we covered a lot of ground. My best estimate is about fifteen minutes.

Q How long have you been employed by the pension fund?

A Five years.

Q How long have you been an investment manager?

A Five years.

Q What did you do prior to becoming employed by the pension fund?

A For the preceding approximately three years I was in the investment department of Federal Insurance, and later of Chubb Corporation, which was the holding company for Federal Insurance, and I had worked on the stock and bond portfolio there.

Q Federal Insurance is an insurance company?

A It is an insurance company.

Before that, for seven years, I had worked for H.C. Wainwright & Company, after having been graduated from Harvard Business School in 1959.

In this capacity I was a security analyst and called on management and wrote reports, among other things.

Q Do you have any graduate degrees?

A My education --would you like to hear my educational background?

Q Sure.

A I went to Brown University. I was Magna cum Laude, Phi Beta Kappa,high honors in economics and mathematics.

I went to Harvard Business School and obtained a MBA degree in 1959.

Q Did you receive any graduate degree after the MBA?

A Graduate degrees after the MBA?

Q Yes.

A No, I took the New York Institute of Finance course. I didn't obtain a degree from it.

Q Are you a certified CFA?

A I am and I was at the time that I made this inquiry of Mr. Waldman.

Q Prior to joining the pension fund, did you have occasion to investigate a toy company with an eye to investment?

A Yes.

I'm sorry, did you say prior to joining the pension fund?

Q Yes.

A I did not prior to joining the pension fund.

MR. BICKS: That is the question.

A The answer is no.

Q Did you have a knowledge with respect to the toy industry prior to joining the pension fund?

A I had read material from the Bank of New York at Chubb on it, but prior to joining the pension fund, no. That would be the extent of it, I guess is the proper way to answer the question.

Q Do you recall what that material was?

A Yes. The Bank of New York put out industry studies on the toy industry which circulated among us.

Q Would you describe those industry studies?

A They generally ran seven to ten pages and gave a description of the industry and some reference to the various companies in it.

Q Do you recall whether it made reference to the means of financing in the toy industry?

A I don't recall.

Q Did you, prior to joining the pension fund, have any knowledge concerning means of financing of toy companies?

A No.

Q Did you, prior to joining the pension fund, have occasion to make investigations into companies that were financed by accounts receivable finance?

A No.

Q Now --

A Not that I recall.

Q Companies that were factored?

A I do not recall any specific instances of this prior to joining the pension fund.

Q Do you know what the difference between factoring and accounts receivable financing is?

A I think I have an idea of what factoring is. I think you are asking me a technical question.

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A I did some work on the toy industry.

Q When was that?

A This would be between April of 1969 and the Topper private placement.

Q Did you do that work by yourself, or did you have assistance?

A By myself.

Q Did you discuss that work with other people at the pension fund?

A I don't recall it. I believe it would be -- there might be some record of it. Let me put it that way.

Q Aside from any record, do you recall discussing your work, after April 1969, on the toy industry with anybody?

A No.

Q Can you summarize what that work constituted from April 1969 through the end, say of 1970?

A I attended a meeting of the Burnham Company held for the management of Mattel. The time of it, I don't remember the exact date, but it was after they acquired the company that made goldfish tanks.

Q Do you recall whether that was soon after April of 1969?

A I don't remember the specific date.

Q Was that your first contact after joining the pension fund with the toy industry?

A I can't say that it was my first. I remember that one particularly well.

Q The only prior investigation that you recall with respect to the toy industry, prior to attending this meeting at Burnham & Co. was that publication which you stated earlier you had read, concerning the toy industry?

A At my time at H. R. Wainwright I had done some work on it and I was a shareholder in Milton Bradley, which was a toy company.

Q What work had you done on it at that time?

A I read the financial statements and whatever brokerage material was available.

Q Do you remember whether Milton Bradley was financed by accounts receivable financing or factoring?

A I don't recall.

Q Do you recall at the time you made your investment you knew that?

A I don't recall.

Q Aside from your investment in Milton Bradley, aside from the discussion or the publication which you said you had read concerning the toy industry prior to joining the pension fund, had you had any other experience concerning the toy industry?

A I also read the brokerage material that came out during this period at Chubb and throughout on the toy industry, but there wasn't a great deal of it.

Q Can you approximate how much there was?

A I don't understand the question.

Q Well, was it a monthly type publication that you would read concerning the toy industry?

A No.

Q Semiannually?

A No. It was whenever the brokers chose to write about it, I read it.

Q You don't recall the frequency?

A There wasn't a great deal of information that was published on it in the brokerage community.

Q Was there any particular reason why you attended the meeting at Burnham & Co. concerning Mattel?

A In effect, in this capacity as senior security analyst, I screen a number of industries and do work on it, and it was in this capacity of looking at the industry that I went there.

Q What did you do after attending the meeting at Burnham & Co., if anything, concerning Mattel?

A Well, there was a formal part of the meeting and afterwards there was a cocktail session, and I chatted with Ruth Handler, the president of Mattel.

Q Did you take any action with respect to Mattel or any other part of the toy industry as a result of that meeting, or the discussion with Ruth Handler?

A No.

Q When, subsequent to that meeting at Burnham & Co. in discussion with Ruth Handler did you next investigate or read material concerning the toy industry?

A Well, I was invited and attended a luncheon for Ideal Toy Management.

Q Do you recall when that was?

A Some time from when I came to the pension fund and the late July 1971.

Q Prior to the year 1971?

A Prior to work on Topper.

Q You don't recall the year, though?

A I remember the luncheon. I don't remember the time.

Q Can you state what transpired at the luncheon?

A There was a formal management discussion by the senior officers of Ideal of their business, followed by a question and answer period.

Q Did you take any action respecting Ideal or any other part of the toy industry as a result of that luncheon and discussion?

A No.

Q When was the next contact that you had with any part of the toy industry, subsequent to that luncheon respecting Ideal?

A Throughout this period, I was reading whatever brokerage material came out, but I don't recall having any other direct management contacts.

Q Do you recall any particular brokerage material which you read, subsequent to that luncheon?

A Excuse me. My mind wandered.

Q Subsequent to the luncheon concerning Ideal.

A Not a particular report. It was reading material.

Q Do you recall what the substance of that material was in the sense whether it was favorable or unfavorable?

A The material or most of the material, was on Mattel, and this was at that time quite favorable from the brokerage community.

There was some material on Ideal and this was also favorable.

Q You took no action respecting either of

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and then to present something in writing to Mr. Mole?

A That is correct.

Q Are there any guidelines set down for investments by the pension fund? Any written guidelines for investment policy?

A I don't have any and I have not seen any.

Q To your knowledge, there is no general -- there are no general guidelines to be followed in investigating into potential investments?

A This would be something that the president of the pension fund might have from the finance committee, but I have not seen it. I don't know of the existence of any.

Q You don't know whether in fact they exist or not?

A I don't think they do, but I am not sure.

Q Is there any publication of which you know which would summarize or discusses the investment and philosophy of the pension fund?

A No.

Q Do you submit an annual statement to the IRS?

A This is outside of my field. I don't know.

Q Who would be most knowledgeable with respect to that in the pension fund?

A I think the president of it.

Q To your knowledge, you have never seen any publication submitted to a governmental agency or otherwise which discussed the investment philosophy?

A You didn't ask me that. You asked me about the IRS.

Q I am asking you now with respect to any government agency.

A This is out of my area of competence.

Q Your answer is the same, you do not know of any?

A I don't know of any.

Q You have never seen any set of guidelines distributed internally or externally as to investments?

A I don't believe there are any in existence, but I can't say that with certainty.

Q When you first joined the pension fund, did you have a discussion with Mr. Mole? Was he then president when you first joined?

A Yes.

Q Did you have a discussioh with him at the time of joining the pension fund?

A Could you be more specific?

say he covered you.

A He would be the one who was responsible for making contact with us and presenting any investment ideas, stock recommendations, or seeing that we got prospectuses.

Q If something came up that he thought was good, he brought it to you?

A Yes. He serviced the account.

Q How long, to your knowledge, had the pension fund had an account with Hayden-Stone?

A I don't know that we did have an account.

Q You said he serviced the account.

A By that I mean he covered us -- Hayden-Stone -- there are many brokerage firms that would like to get business from us and have people on the account, and we don't necessarily do any business with.

Q Had you ever done business with him previously -- with this salesman?

A Not to my knowledge.

Q When he sent you the preliminary prospectus had you had contact with him previously?

A I don't remember having had any contact with him.

Q After you received it, he called you up and asked you wehther in fact you had received it?

A I received it and he asked me -- he recommended the issue to us.

Q What was your response?

A I told him I read it and told him we had no interest in investing in Topper at all because of the past history of substantial deficits, and the fact that the capitalization was very highly leveraged.

Q What was the gentleman's name?

A I believe it was Nick Luongo.

Q What was Mr. Luongo's response? If you can recall, if any.

A He accepted the fact that we were not interested in it.

Q When was the next time you heard the name Topper, subsequent to that?

A Mr. Luongo and I believe this was the name of the salesman covering us at the time, called up and invited me to lunch.

Q When was that?

A A very short time after I had turned down Topper on the telephone. He again raised the subject of Topper at that luncheon and recommended it to us as an investment.

Q When you say to us, was there somebody else there?

A No. U.S. Steel and Carnegie Pensions Board.

Q Just you and Mr. Luongo?

A Yes.

Q What was your response at that time?

A I repeated what I told him before. This was not an appropriate investment for us because of the substantial deficits and past history of the company, and the highly leveraged capitalization.

Q Did Mr. Luongo respond to that statement at all?

A Again, he accepted my conclusion.

Q Subsequent to that luncheon with Mr. Luongo when was the next time you heard the name Topper?

A Glover Johnson, a partner of White & Case, and a director of Topper, called up and recommended that the pension fund invest in Topper, in this particular offering.

Q Do you recall when that was?

A Sometime before June of 1970, in the period after I read the original red herring, in the spring of 1970.

MR. LILLIE: Would you read that back tome?

(The answer referred to was read back by the reporter, as requested.)

Q Did you respond to Mr. Johnson's statement?

A I indicated that I had previously seen the preliminary prospectus and revived Topper and that I wasn't interested in investing in it for the pension fund.

Q . Did Mr. Johnson add anything to what Mr. Luongo had told you previously?

A No. I had never heard of Mr. Johnson before this telephone call, and he did not discuss the company with me.

Q After your phone conversation with Mr. Johnson, what was the next time you heard of Topper?

A When I was approached by Hayden-Stone in late July of 1971 concerning the private placement of subordinated convertible debentures.

Q By whom at Hayden-Stone were you approached?

A There may have been a brief contact with Victor Green, who was the salesman after Luongo, but J. Inglis was the one I talked to there on this.

Q To the best of your recollection, you talked to Mr. Green initially, and later Mr. Inglis?

A Green was the salesman on the account.

Q Who took Mr. Luongo's place?

A Yes. He took his place, and then I am not sure whether I talked to him or not.

Q You talked to Mr. Green from time to time, is what you said.

A Well --

Q Not concerning Topper, but you would

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A Yes. For the private placement.

Q Do you recall whether the prospectus itself was in it as an exhibit?

A It was included in it as an exhibit.

Q As Exhibit 1?

A As Exhibit 1, but I would have said it was an integral part of it.

Q When you talked with Mr. Inglis the first time, could you relate what he said to you and what you said to him?

A He indicated that Hayden-Stone had a -- was the investment banker for Topper and recommended to us an investment in this private placement of subordinated convertible notes. Actually, debentures was the terminology.

I indicated to him that I had looked at Topper once before and that I did not consider it an appropriate investment for us, because of its past history and the large amount of borrowings relative to the equity in it.

He indicated that Topper was a much different company now than then and wanted to arrange a meeting between the pension fund and the management of Topper.

Q Did he explain to you at that time in what sense Topper was a different company?

A It had more stability to it and was less dependent upon a seasonal factor.

Q Did he explain that in any greater detail?

A Not at that time.

Q He indicated during that discussion that he would send you a copy of the offering memorandum.

A I declined his invitation to meet with the management of Topper at that time and asked him if Hayden-Stone had prepared anything in writing about the company.

In response to that he sent me the offering brochure.

Q What else did you talk about with Mr. Inglis at that time, if anything?

A That was in essence the conversation.

Q To the best of your recollection, you had been given, or Mr. Inglis had been given your name or you had been given Mr. Inglis' name by Mr. Green.

A Mr. Green was the one who contacted me, I believe, originally and Inglis had gotten my name through him.

Q Did Mr. Inglis indicate to you on that conversation that Topper had had a public offering recently?

A No. I don't believe he did.

Q You mentioned that one of the things you were concerned about was the high debt to equity ratio.

meeting, I said, well, if some time, if they are in town, I will meet with them.

He then called up very quickly thereafter and arranged a meeting with the management of the Topper on August 4th.

Q Did you meet with management on August 4th?

A Extensively.

Q Where did that meeting take place?

A The meeting with the management of Topper took place at their showroom in New York City and then went to their headquarters facilities in Elizabeth, New Jersey, and it ended at a showing of Ding A Ling commercials in Dancer Fitzgerald's office in New York City.

Q Do you recall on what day of the week this was?

A I believe it was Wednesday.

Q Do you recall at what time you met at the showroom?

A It was fairly early in the day. Mr. Orenstein had his car and chauffeur drive me down from -- and I believe Mr. Inglis was with me.

Q Drive you down from where?

A From General Motors Building where I had been with Jay Inglis, to the showroom. So it was in the morning.

Q You met, previous to your meeting with management, with Mr. Inglis?

A Yes.

Q Was his office in the General Motors Building?

A Yes.

Q What time did that meeting take place?

A Early in the day.

Q You mean early morning?

A Early morning, like nine o'clock.

Q Can you recall, to the best of your recollection, what was the substance of that meeting?

A Well --

Q With Mr. Inglis. This is prior to Mr. Orenstein picking you up in his car.

A I discussed the change in Topper, why there was more stability in it now than when I looked at it before.

He indicated that the company had gone into a program of Dawn Dolls, which was a low-priced item which would sell year round and that this was giving the company stability, and at that time he indicated that they had -- and referred to the prospectus in the document -- that indicated that they had obtained common stock financing in April of 1971.

MR. LILLIE: Read that back.

is the company different now than it was then?

Q That was your question to Mr. Inglis?

A Yes. And his response to it.

Q By your question, you were relating back to his earlier statement to that effect when you talked to him on the phone, or did you come to the conclusion that the company was different in 1971 than it was in 1970?

A No. I was not relating to his earlier statement. I was putting the burden of proof upon him to tell me why, you know, this was a good investment for the pension fund now.

Q You had read the offering memorandum and the public offering statement prior to meeting with Mr. Inglis?

A Yes.

Q Had you come to any conclusions on the basis of reading those documents?

A No. I had not come to any conclusion.

Q Had you changed your mind at all from the way you felt in 1970?

A No. I was willing to look at the deal but I certainly was quite interested in being convinced this was a different kind of investment in late July 1971 than it had been in the past.

Q Nothing you saw in the public offering statement or the private placement memorandum had altered your thinking with respect to Topper from the way that you thought in 1970?

A No. I had -- I would just answer no. I felt the burden of proof was on the company, and the investment banker, to tell me why it was different.

MR. LILLIE: Let us take a break now for lunch and come back at 2:30.

(Whereupon, at 12:30 p.m. the deposition was recessed for luncheon.)

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In addition, the brochure on the one hand indicated that about fifty per cent of the sales in the toy industry were in the final three calendar months of the year, and emphasized that Topper had gone into a program to stabilize its business with a lower priced line that was featured by Dawn. In fact, the Dawn part of it which was featured in the beginning of the prospectus and indicated they had gone into a program of, I believe, shipping ten or elevent million dollars of the merchandise out in December of 1970, which would be paid for in 1971.

Q You don't recall whether they reported that in 1970 sales, do you?

A Yes, they did.

Q Do you recall what percentage those sales were of the total sales for 1970?

A Well, they had fourteen million in this entire spring program as they indicated it, of which I believe eleven million were Dawn items, and this relates to a total sales of about sixty-four million dollars.

Q You mentioned earlier that you were concerned about, I believe, another toy company that had too much of its sales in one particular area.

Do you recall discussing that?

A Well --

* * * *

Your earlier discussion with respect to Barbie dolls and Mattel -- I am trying to update with respect to Dawn and Topper.

Do you understand?

A I think so.

Q If you don't, please stop me, because I don't want to confuse you.

A Go ahead with your question.

Q My questions was, when you were considering Mattel, aside from whether or not the Barbie dolls had staying power, did you consider it a disadvantageous point with respect to Mattel, their large sales quantity in Barbie dolls?

A This was a potential problem, but I never seriously considered investment in Mattel.

Q That was one of the reasons; isn't that correct?

A That was one of the reasons. A possible reason.

Q Did you look at the large amount of sales, with respect to Dawn, the ten or eleven million dollars of sales which you just mentioned in terms of the sixty million dollar volume in sales totally?

A Yes. I spent a good deal of time in the meeting with Mr. Inglis discussing the Dawn program as to whether it was moving, and the merchandise had been sold, what controls the company had to make sure that in fact the merchandise was sold, and I was told that Mr. Orenstein monitored the sale of goods over the counter and that Hayden-Stone, in connection with the April 1971 financing, had inquired into this, and their indications were that the Dawn merchandise was moving well. And this had been a very successful program that would lend stability to the operation.

I questioned Mr. Orenstein again in the showrooms on Dawn.

Q. Let us stick with your meeting with Mr. Inglis on August 4th, I believe you stated.

How long was that meeting? How long was that meeting?

A I would say approximately forty-five minutes.

Q Of that forty-five minutes, do you recall approximately how much time was spent discussing Dawn?

A The three topics that we discussed at that meeting that come out with the prospectus -- the offering brochure which contained the prospectus, what controls the company had, and why it didn't have the same problems that it had in the past when it was selling on consignment to supermarkets, and these goods had come back after Christmas.

Q That was one subject? What you just discussed was one general subject?

A One general subject would be the Dawn program, and the stability of it, the success of it. How Hayden-Stone had -- the work that they had done to indicate that this was successful, and how the company had also done checks to make sure the goods were moving.

The second topic would have been the reporting controls that the company had, ~~and~~ as this was not discussed in great detail in the booklet and was mentioned by Mr. Inglis.

The third topic that I spent the most time talking about would have been the relation of Hayden-Stone to Topper.

Q Let us take the first topic. The Dawn.

Did Mr. Inglis, you said you talked about the efforts that Hayden-Stone had taken with respect to looking into the stability of the Dawn line.

What did Mr. Inglis tell you that Hayden-Stone had done along that line?

A He indicated that they had questioned the management about this at some length and that in particular with respect to the April 1971 financing they had asked the company about that to be sure that these goods that were shipped were actually sold, and that the spring program was a success.

Q Do you recall whether the spring program was mentioned in the prospectus?

A It was mentioned very prominently. The first or second page of the text.

Q What steps had Hayden-Stone taken if Mr. Inglis told you, to see that these goods were actually shipped or actually sold?

A At some point in the investigation --

MR. BICKS: Do you understand that to be sold by Topper or sold by Topper's customers?

MR. LILLIE: I understood that to be sold by Topper.

Q Is that what you meant?

A Please repeat the question.

Q I may have misunderstood your answer and therefore that is what led to the confusion.

A Repeat the question.

Q You said that one of the things you talked about was Hayden-Stone's investigation to make sure that the Dawn line of goods was moving and actually was sold.

Is that fair summary of your statement?

A Yes.

Q Do you mean sold by Topper or sold by the customers of Topper?

A Sold by the customers of Topper.

Q What steps then did Mr. Inglis report to you had been taken with respect to that?

A That the senior management of Hayden-Stone had questioned the Topper management about this at some length. I believe he also made reference that they had compared the extended payment terms of Topper to those of Mattel and that they had assured themselves that these goods actually were sold at the retail level, and the merchandise was moving.

Q That Hayden-Stone had actually run a comparison between the methods of Topper and other toy manufacturers?

A The specific reference was made to Mattel.

Q That Hayden-Stone had done a comparison with respect to the methods of selling this?

A They had checked into this and were aware of the difference in terms of the two companies.

Q Did Mr. Inglis indicate one way or the other whether Topper's methods were satisfactory along this line?

A Well, he indicated that the terms were shorter for

Topper and therefore that the Topper customers had less time to pay for the goods than the Mattel customers.

Q Did he tell you any amount of time along that line?

A No.

The figure that was in the prospectus on this spring program was five to eight months.

Q Mr. Inglis, though, didn't mention that at the time, to your recollection?

A Well --

Q You didn't ask Mr. Inglis again about the amount of time involved?

A No. That was clearly stated.

Q That was stated in the prospectus?

A Yes, in the footnotes of the financial statements.

Q Did you discuss any other facets of the Dawn line with Mr. Inglis at that meeting?

A I can't say that I didn't. The impression that I had from him was that this was a highly successful program, that Hayden-Stone had looked into it. The merchandise was moving. The company was actually reordering moreDawn dolls and looked forward to a similar program in 1972.

Q The second subject that you said you

discussed with Mr. Inglis was the reporting controls, is that correct?

A Yes.

Q Would you explain to me what you mean by that?

A Well, there was not much explained in the Hayden-Stone offering brochure.

Q About the private placement?

A Yes. For a company that had its past history in a business that would have an above average risk, relative to, let us say, the food industry, I inquired into what steps the company had in terms of financial controls, and Mr. Inglis indicated that later in the day I would meet with Mr. Rose and that Mr. Rose would go into this in some detail. And that, in fact, the company had a very elaborate computer system that gave them very good checks on whether shipments were being made in relation to orders, and referred to, I believe, accounts receivable reports and inventory reports.

Q Did Mr. Inglis indicate to you that he had reviewed these elaborate procedures?

A No. He did not indicate that he had. He really referred me to Mr. Rose at the company on this.

Q So you really did not discuss with

In this case Mr. Inglis indicated that there was a long relationship between Hayden-Stone and Topper and this would encompass several financings, including the June 1970 and April 1971 financing, and that they had really been involved with the company since its buy-back from Philadelphia & Reading.

Another thing that is an indication of how close an investment banker is to the situation is whether they had any of their own money in it.

I asked Mr. Inglis this. He said that it was the largest personal holding of Berlind & Weill. He brought to my attention the fact that they were on the board of directors of the company, and I think I said I knew this because it was mentioned in the offering brochure.

Q Their general relationship with Topper was mentioned in the brochure, was it not?

A The way that ~~I~~ it was presented that it was an extremely close relationship. It was the largest personal holding of Berlind & Weill. The firm had been very active in the April financing and had -- was totally on top of the situation.

Q You knew that they had a long relationship prior to talking with Mr. Inglis?

* * * *

and I asked Mr. Orenstein the same questions that I asked Mr. Rose.

At some point --

MR. BICKS: Did you mean Rose or Inglis?

A Excuse me. I meant Inglis. He represented that he was on top of this business and he personally checked with the buyers in the stores to see that the toys were moving, and that the spring program had been a success.

In fact, he indicated at this point that they had reordered additional merchandise.

The next thing we did --

Q That Topper had reordered additional merchandise?

A That Topper had reordered additional merchandise.

Q When you say reordered, you mean ordered?

A By that I mean, to replace the merchandise that had been sold to the customers at retail level and they were getting ready for their spring 1972 program.

Q What else did you and Mr. Orenstein discuss during your tour of the Topper toy line?

A Mr. Orenstein showed me their Suzy Homemaker Oven. At this time there was concern about -- the safety of the product line, they were concerned about the press coverage.

Mr. Orenstein indicated he designed a plug for the Suzy Homemaker line which had become an industry standard that would protect children and that they couldn't open the oven doors unless the temperature was below 140 degrees.

Mr. Orenstein then showed me the Smarty Pants line of dolls which he indicated were particularly a good selling item, and insisted that I actually kiss the doll to get its vocal response, which was the big selling point of it. And we discussed this line.

We next looked at the Johnny Lightening line.

Mr. Orenstein indicated that at this point ~~Mr.~~ Mattel had loaded the trade up with Hot Wheels at the end of the previous selling season and the trade was angry with Mattel, and this would help them in selling the Dawn line and had helped them.

We actually played a game of Johnny Lightening there.

Q Did you express a concern to Mr. Orenstein about the percentage of sales with Topper that were taken up of the Dawn line at that time?

A I didn't speak in terms of the percentage of sales, but I spoke of it as to how is this product going and it was obviously important to him and to me.

Q Aside from discussing the various toys and seeing how it operated, did you and Mr. Orenstein discuss anything else during that tour of the toy line?

A Well, we ended the tour of the toy line with the Sesame Street merchandise. He indicated this again would be a stabilizing influence in the company's business and was most enthused, and particularly with the arrangement with the Childrens Television Workshop, and the company's Spell-a-Phone and Walking Letter product.

We also looked at some coloring books and puzzles. He weighted this heavily as a plus for the company.

I might add that he mentioned the arrangement with the Childrens Television Workshop at that time. He indicated, I believe, that it went on until December 31, 1974.

Q Did you mention anything else, or did you discuss anything else with Mr. Orenstein during your tour?

A I don't recall it. These are the most important points.

Q Following your tour, did you have a discussion with Mr. Orenstein?

A Following the tour of the showroom I was driven to the Elizabeth, New Jersey, headquarters.

Q You didn't discuss anything following your tour while you were still at the showroom?

A I don't remember so doing.

Q Did Mr. Orenstein go with you to the Elizabeth plant?

A I really have no recollection of his so doing.

Q Did Mr. Orenstein go with you to the Elizabeth plant?

A I really have no recollection of anything other than being driven out there, but I assume that he did.

Q You went out in his car?

A With his chauffeur.

Q You don't recall discussing anything after the tour or on the way out there with Mr. Orenstein?

A No. I have no recollection of it. I am not really sure that Mr. Orenstein went with me.

Q Did Mr. Inglis go?

A I believe Mr. Inglis did.

Q To Elizabeth?

A Yes, he was out there at some point.

Q Did somebody introduce you to Mr. Rose when you got there?

A Mr. Inglis was with me when I spoke to Mr. Rose.

Q In Elizabeth?

A Yes.

Let me say, he was not physically in the office when I spoke with Mr. Rose and he was there and we talked together.

Q Had you met Mr. Rose previously?

A No.

Q What transpired during your trip to -- during your stay at Elizabeth?

A I went into Mr. Orenstein's office shortly after I got there. We talked again about the Dawn line.

Q Who is he?

A Mr. Orenstein and I, and he actually showed me one of the little Dawn dolls.

I believe at this point he referred to a sculpture which he made in his office and asked me my impression of the artistic facial structure of the Dawn doll.

At this point in time he indicated that he had talked, I believe that morning, with Glover Johnson of White & Case.

Q Mr. Orenstein indicated?

A Mr. Orenstein. In fact, he said he talked that morning with Glover Johnson from White & Case. That Glover Johnson was available for me to talk to about Topper, if I so chose, and he encouraged me to do this.

Q After you were in Mr. Orenstein's office and you talked with him for a while, after he mentioned

* * * *

talked to Rose again.

Q I didn't mean to interrupt.

What did you and Rose talk about?

A Well, I asked Rose what types of controls the company had.

Q With respect to what?

A Receivables and inventories, and we discussed at some length the controls of inventories, because he made the point that the way that toy companies got in trouble,if they did, was overproduction. That he felt that at the retail -- excuse me -- I don't mean retail, at the level that Topper sold customers, the goodwill in the toy stores was worth about thirty or forty per cent of toy sales, and it would be foolish for the company to overstock them and leave distressed merchandise on their hands.

He indicated that the company had an elaborate set of controls that indicated that they had lead parts on hand so they would never have to close down a production line if they wanted to keep it open, but they were not overstocked on the standard parts.

He also made reference to the financing arrangement with First National City Bank and said that they had reports of accounts receivables, aging reports, and that there were reports of cash flow collection.

He was in almost daily contact with the bank.

Q Did you ask him about the bank, or did he volunteer about the accounts receivable?

A In response to my question, what controls do you have, he brought up the inventory controls and also discussed the accounts receivable controls.

Q How long did your discussion with Mr. Rose last?

A In his office, I would say fifteen or twenty minutes.

We then walked down to the computer room at the end of the hall where his office was on the second floor so I could visually see the setup.

Q This was the setup for what?

A Computers.

Q Inventory controls and accounts receivable?

A Really for all products that were produced on the computers that they had.

At this point we talked about how the company monitored its collections and he indicated at this point that his people in contacting the particular chains asked them whether the merchandising goods were actually moving over the counter.

On the way back from this, I asked him if sales were final.

He indicated that they were.

I brought up the subject of what happens if a customer has some merchandise that isn't selling and wants to return it.

He said that Topper was hardnosed,and hardnosed is his exact word in this and that there was no obligation to take this back, and in fact they didn't do it.

He qualified this by saying that if a customer had a line that was a good line, and wanted to exchange a small quantity of it for one type of Dawn doll versus another type of Dawn doll, ~~and~~ that this was possible, but the company discouraged this.

Q Did you see any documents relating to inventories and accounts receivable while you were talking to Mr. Rose?

A No. I saw the documents being produced at a distance. I did not see them at this meeting. I went over it with him at a later meeting in our offices.

Q This time that you were out in Elizabeth, how long in total were you with Mr. Rose?

A I was with Mr. Rose, let us say, roughly half the time. It was divided.

* * * *

A He was with me part of the time, but I do not have a clear recollection of the specific times that he was there. My recollection is that he was there a good deal of the time, and that he was offering encouragement, and particularly on the Dawn line,as to how well that was going.

Q So you had lunch with Mr. Orenstein and then you went to look at what?

A He took me through a rather complete tour of the facilities. We went into one room where a man's job was to estimate the cost of new toys. He asked me to name a toy. I did name it.

The man then produced the record of his estimate and we compared that to the actual cost of production at the time of that item. It was very close.

I remember saying to Mr. Orenstein, "How did you arrange for me to guess that one?" It was so good, I mean.

We then went down and I believe I met a Mr. Blumenthal, who was in charge of, maybe in charge is incorrect, but involved in the new product development.

We then saw the line of new toys that Topper was working on with regard to Sesame Street, and also a line of action toys.

Q Did this include the Dawn accessories?

A Yes, it did.

Q Did you talk to this guy, Mr. Blumenthal, about the Dawn accessories?

A No. I did that with somebody else.

Q You didn't really discuss anything with Mr. Blumenthal?

A No.

He was a creative type and I watched what he created basically, and we then went into a room where there was a small machine shop, where they were designing molds for potential new toys.

After that we went into a room and I met a person whose name I don't remember. In this room with Mr. Orenstein we again discussed the Dawn line and I brought up again, "Well, this is an important line and you indicated that they are selling -- are there any controls that you have other than Mr. Rose's computer set up to know that the goods are actually moving?"

In response to this the man in the room pulled out a box full of Polaroid snapshots of Dawn displays and he cited this by saying that every time a Topper salesman went into a store, they took a Polaroid snapshot of the Dawn merchandise.

I said, this is pretty smart, because you know they will stock it properly and it will be neat before they take their picture.

He offered to show me some of these snapshots and let me go through them, and I picked out one that was for Brodsky's, which is a toy store in Cranston, Rhode Island. I grew up there.

And I picked up another one, Barkers, in Carmel, New York. It so happens I had been in that particular store. This seemed to be -- and I believe it was just random luck.

I was most impressed that the company had done this and this seemed to substantiate what Mr. Orenstein said.

I believe Mr. Inglis was present at this and was very pleased at the comments and my satisfaction, and again added that this confirmed what they knew.

Q Mr. Inglis indicated he was aware of that practice?

A No, he did not.

Q He indicated generally that confirmed what he knew about Topper's efforts to keep control on what it sold?

A Yes.

Following this, I went back to Mr. Rose's office.

Mr. Rose then took me out of the office building and over to the plant where I met a Mr. Cassata.

Q Did Mr. Inglis go with you at that time?

A No, I don't believe Mr. Inglis went with me at that time.

Q What transpired when you went over with Mr. Rose to see Mr. Cassata?

A On the way over we talked about Remco's problems. It was a toy company that had gotten into trouble. The way that toy companies usually get into trouble is by overproduction of goods, and he said that he was aware of this and his control system would prevent this.

Q Did he bring up the subject of Remco, or you?

A I did.

Q You were then aware of some problem Remco had encountered?

A Yes. I don't know whether it was in the press and I don't know whether they were on the verge of bankruptcy, but I know there was a problem.

Q Did you know what the problem was?

A No.

Q Did Mr. Rose indicate to you that Remco's problem was a lack of control over inventory?

A Yes.

Q What did you discuss in addition to what you discussed when you and Rose talked to Mr. Cassata?

A This was a very brief period in going from the office building to the plant. I didn't discuss much of anything in the plant with Mr. Cassata because the plant was quite noisy.

I did ask him how old the plant was.

His comment was, "When George Washington crossed the River he found our plant here."

He also added that the guts of the business were the molds, and not the machinery. He made allusion to the fact that Topper had a backlog of molds of products that at some point might come on the market again, and this had been written down, and this was a valuable asset of the company.

I went through the plant with him. By this time it was getting to be fairly late in the day and I checked the output at random of a couple of production assembly lines there to see how they were doing in relation to the standard output "take-in the day."

On every case they were on the incentive rate and above this.

We talked about the labor force and the average hourly rate out there, which I believe he indicated was about $2.25, and also the turnover rate in the employment factor there.

Q Anything else?

A I think this is the bulk of what went on with Mr. Cassata.

As I say, it was noisy and it was difficult to talk, so I mainly saw instead of talked.

Q Did you and Mr. Rose discuss anything later on?

A No. I went back to Henry Orenstein's office and he asked me if I would like to go with him to see Ding A Ling commercials at Dancer Fitzgerald.

Q What is Dancer Fitzgerald?

A An advertising agency in New York City.

Q Did you leave then with Mr. Orenstein?

A I left with Mr. Orenstein.

Q Mr. Rose?

A No, Mr. Rose remained.

Q Mr. Inglis?

A Mr. Inglis and Jack Jones.

Q Who was Jack Jones?

A He was a new addition to Topper staff, who had been with Mattel for about ten years, and then in the consulting business, and had come with Topper to be in charge of their promotion.

Q You were explaining who Jack Jones was.

A At one point during the day with Mr. Orenstein, I asked him about management succession in the company, because he clearly was a very important figure on the management side.

Q What was his position at that time?

A Mr. Orenstein?

Q I thought you were talking about Mr. Jones.

A Jack Jones was vice president and I was told he was going to be made a director of the company very soon.

Q Please continue.

A Could you read back the record?

MR. LILLIE: Read back the record.

(A portion of the record was read back by the reporter, as requested.)

A In talking about management succession to Henry Orenstein, in case something happened that his plane went down, I actually thought he was older than he was at the time. He indicated that someone named Albert Hammer, who I never met or have ever talked to, would be the successor, but that Jack Jones had been brought in really to beef up management strength, and there was an

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A He mentioned Voronado, Two Guys, also Korvettes.

I had the feeling he was particularly directing me to this one account here and I indicated to him that we would make our own checks, ~~and~~ or I felt I was being directed to somebody that would give me a favorable reply, and that knew him well and was a close friend. This would not be an objective reading.

Q He said that was okay for you to go to these other trade accounts?

A Yes.

I think I told him I was going to do it and asked him in particular if he knew Abe Marx at Harfield Zody.

I mentioned that the pension fund had been an early backer of Zayre.

Mr. Orenstein kind of paused when I said that. I presented it as a fact. I said we were going to do it and he didn't try to dissuade me from doing it.

Q Does that refresh your recollection as to anything else that you can remember?

A I think we covered it now.

Q So then you went to the advertising agency to watch the commercials.

A After having left Inglis off at the General Motors Building.

Q Where was the advertising agency?

A Someplace in midtown Manhattan.

Q You and Mr. Orenstein alone went there?

A Jack Jones also went there, too.

Q What transpired there, aside from looking at the commercials?

A That was really it. We went into our projection room. I remember there was a black chair in the center of all the red chairs, which they gave Orenstein to sit in, and he then viewed the Ding A Ling commercials, which would be on television the following Saturday morning.

Q Any discussion while you were at the advertising agency?

A Little discussion. It was late in the day. We were tired and it was really -- for him to screen these commercials to give the okay for the Saturday showing.

Q Did you leave then and go back to your office?

A I left and went home. I live uptown.

Q Directly from the advertising agency?

A Yes.

Q By yourself?

A By myself.

Q Mr. Orenstein left also?

* * * *

ahead from Mr. Mole?

A At some point thereafter in the next few days, and my recollection of the exact time is unclear, I called Sumner ~~Felberg,~~ Feldberg who is one of the ~~Felbergs~~ Feldbergs who is the founding family of Zayre, and was then the executive vice president of it, and told him that we were considering an investment in Topper, and asked him if he would have the person who would be most knowledgeable about it. Give me a call.

I also called John Hebard at ~~John~~ J.C. Penney, who is an assistant treasurer at J.C. Penney, with whome I had some months before concluded a sale lease-back, and asked if he would do the same thing. If he would check to find the proper person in the organization, ~~and~~ in the toy section, and have them give me a call, and so that I was trying to make a trade check on Topper through these two sources.

Q Did somebody call you back from Zayre?

A Yes.

Q Who?

A Mr. Hessdorf.

Q Did you know him?

A Yes.

If you are going to ask me about the Hessdorf conversation, it will be more meaningful if I tell you about a couple of other conversations that came off in between.

Q Please do.

A Yes.

Q You called Zayre and you called J.C. Penney.

A Yes, our contacts there.

Really, the next time that Topper came up after I got the green light to go ahead from Mr. Mole --

Q On the 6th?

A About the 6th.

There was a Dan Dorfman article that came out in the Wall Street Journal, an article ~~I heard~~ in "Heard on the Street", that was about Topper.

I read that article before I had responses from Mr. Hessdorf and Mr. Folan.

Q What did the article in the Wall Street Journal say?

A The article in the Wall Street Journal indicated that Topper was in the process of seeking five million dollars of convertible subordinated financing and they had a seven million dollar tentative commitment for what turned out to be the Ford Motor Credit line.

Q Did you know about the Ford Motor Credit line prior to reading that in the Wall Street Journal?

A Yes.

Q From whom had you heard concerning that?

A This was mentioned in the Hayden-Stone offering brochure and was indicated there would be seven million dollars at about five and a half per cent over the prime, and this was put in as a footnote, and Mr. Inglis mentioned it.

Q Did Mr. Inglis mention it at your meeting on the 4th?

A Some time on the 4th he mentioned it.

Q So that the Wall Street Journal article did not tell you anything you did not know, is that correct?

A The point in the Wall Street Journal article was an implication that there was much less an exclusive relationship with Sesame Street than either Mr. Inglis or I had been led to believe by Mr. Orenstein at the company.

Q Had you thought when you talked with Mr. Orenstein that Sesame Street was a very important aspect of Topper?

A I thought it was important, but I was more concerned that the company stand on its own apart from Sesame Street, and to be very sure that we were buying a going toy company that could withstand the test of

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So I had just finished reading the ~~stand of the~~ "Heard on the street" Wall Street article when Henry Orenstein called me up and he repeated what he told me out there at the plant ~~The proceeding~~ or in the headquarters office building, ~~the proceeding,~~ that they had a relationship whereby if Sesame Street accepted one of the Topper toys, it became an exclusive of Topper, or if Sesame Street asked Topper to develop a particular toy, Topper had all the rights to it.

He indicated that Sesame Street was not considering displacing Topper and that this was greatly overblown.

He then referred me to Chris Cerf, who was Bennett Cerf's son, who was the person at Childrens Television Workshop, and he gave me his number and suggested I call him, and I did this.

Q This was prior to receiving a call back from anybody at Zayre or J.C. Penney?

A That is correct.

In this Dorfman article, Bill Schwartz, whom I met at the Mattel meeting, and the Ideal Toy meeting, was mentioned and I called Bill Schwartz.

Q Who was he with?

A Burnham & Company.

Q During your conversation with Mr. Cerf,

* * * *

A Maybe ten minutes. It was a very brief conversation.

Q Then you called the fellow at Burnham & Co.?

A Yes.

Q All three phone calls were on the same day?

A The Orenstein phone call --

Q The Orenstein, Burnham and Cerf telephone calls?

A The 10th of August.

Q All of them, all three of them were on the same day?

A Yes.

Q What was your conversation with the fellow at Burnham & Company?

A The fellow at Burnham advised me to avoid the private placement in Topper convertible debentures and said he had given the same advice, I believe, to five other people who contacted him.

Q Did he indicate who else had contacted him?

A He did not.

Q When he said that, did you ask him why?

A Yes.

The principal reasons that he gave were that he felt that the Topper product line was shorter than that of Mattel. He characterized the company as being a high roller in spending a heavy percentage of its revenues on advertising, because I knew -- it said they spent about ten million dollars in prospectus on advertising there and he indicated on one instance that a management person at Topper, whom I believe was Mr. Orenstein, had misled him regarding the closing down of a Youth Care line which was a small line.

Q Who was the man at Burnham?

A Bill Schwartz.

Q Is he still there?

A No, he is not.

Q Do you know where he is?

A Winkler, Cantor -- I think I saw a tombstone in the paper about his moving.

Q Are they in the phone book?

A I don't know. I don't know anybody there.

Q Did you have continuing contact with Burnham & Co. during this period?

A No. This was my only contact with Burnham & Co.

Q Did he indicate any other reason why he thought Topper was a bad investment?

A These were the principal reasons, but may I go back to the ride in from the headquarters of Topper, and in Elizabeth, to the Ding A Ling commercials?

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Fitzgerald Building.

I asked Mr. Orenstein if he knew Bill Schwartz at the time, because Bill Schwartz during this period had been one of the people who had been writing material on the toy industry.

He indicated that Bill Schwartz was quite young, which I knew, since I had seen him, and he was a junior analyst,I think, in the Society at the time, even though he was a vice president of Burnham.

He indicated that Bill Schwartz' personal career was very closely tied in with Mattel in that he believed that any information that went to Bill Schwartz went back in a straight line to the management of Mattel, which was Topper's arch enemy.

Q Did you discuss any other people in the investment community besides Mr. Schwartz and Mr. Macalendon?

A These were the only two names. And as I say, I was in effect told that the person who had been out there for Merrill Lynch, who was the man Orenstein brought up,really didn't know all that much about the toy business, and the man that I brought up was one that he felt was tied in very strongly with Mattel in terms of having recommended it to Burnham's clients and wasn't about to

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discuss Topper toys with him.

Mr. Orenstein was very impressed -- excuse me, impressed is not the word I meant.

Mr. Orenstein was involved in really all of the important marketing decisions of Topper.

He indicated that he felt that the management beneath Orenstein lacked depth.

Q Did you discuss Jack Rose?

A I mentioned Jack Rose and he had no knowledge of Jack Rose.

Q Did you discuss Jones?

A I did mention Jones and he indicated that bringing in a person of this stature would be -- with his background ~~ant~~ and stature would be good for the company, and this was a step in the right direction.

I don't believe that he personally knew Jones, but I just discussed Jones' background with him, and told Hessdorf that Jones had recently joined Topper.

Q Did you discuss marketing methods with Hessdorf?

A No.

I asked him if the relationship was satisfactory and really relied on him to tell me about Topper having gone to the executive vice president of the company with the leverage of having ~~back~~ backed the company early, and expected him to follow through on what his boss had told him to do.

I left it up to him to tell me anything in this particular area.

Q I am not sure I understand the past relationships between Zayre and Topper.

A Between Zayre and Topper?

Q Is that what we are talking about?

A I thought you are talking about the pension fund and Zayre.

Q Well, I thought there was some -- tell me about that.

A We had done a private placement ~~of~~ with Zayre~~, a~~ of debt with warrants~~;~~ when the company had Sixty million in sales versus six hundred million in sales now. It was at a time when this was a fairly risky investment in the eyes of some people, and Mr. Felberg was very appreciative of this. It worked out and we made a lot of money in it.

I don't want to leave you with the impression that we only want to get our money back. We want to make money in the deals we do.

I may have created a false impression this morning along those lines.

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Q Did you discuss individuals?

A I believe I brought up Mr. Rose and he did not know Mr. Rose. This was really with reference to the sales side of it.

Q Did he mention any individuals in the sales side of Topper?

A Henry Orenstein was the key.

Q With respect to middle management?

A He did not.

Q On what basis did he disagree with the statement respecting middle management of Topper?

A He indicated that Topper's middle management team was, was fairly competent and was a competent and strong organization.

Q He indicated this, that he knew some of them?

A He indicated this in generalities.

Q What else did you and Mr. Folan discuss?

A We discussed Topper's promotional budget and he indicated that Topper spent a high percentage of its dollars on advertising expenditures, and that it was a TV toy company.

Q Did you discuss marketing methods with Mr. Folan, of Topper?

A No.

Here again, I relied on him to tell me in response to my questions on Topper's management structure and promotion, anything that he knew about the company that would be of interest to somebody making an investment in Topper convertible debentures.

Q Did you talk about the payment provisions of Topper sales?

A No.

Q With Mr. Folan?

A No.

From his point of view this was satisfactory.

Q Did he actually say that or was it because he didn't say anything?

A No. He used the word satisfactory.

Q That was in response to what exact question?

A I tell you, I am getting awfully tired in this point in time.

Q You know of no better way to end a deposition than the witness saying something like that?

A Well, I really am.

MR. LILLIE: I would like to request on the record, the various memoranda to which Mr. Thompson has made reference. If they are available, I think we should have them.

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just to bring you up to date. I asked you if you were discussing individuals and you said you believed you brought up Mr. Rose, but Mr. Folan did not know Mr. Rose.

A That is correct.

Q I asked you whether he mentioned any individuals in the sales side of Topper and you said Henry Orenstein was the key.

A That's right.

Q I asked you concerning middle management and you said you did not discuss that.

A That is correct.

Q I asked you on what basis did he disagree with the statement respecting middle management of Topper, this is Mr. Folan. You said that he indicated that Topper's middle management team was fairly competent and was a competent and strong organization.

A Yes, but he spoke in generalities.

Q I asked you what else did you and Mr. Folan discuss. You stated you discussed Topper's promotional budget. He indicated that Topper spent a high percentage on advertising.

A Yes.

Q I asked you if you discussed marketing methods and you said you did not.

A Yes.

Q I asked you whether you discussed about the payment provisions of Topper sales and you said no.

You said from his point of view this was satisfactory.

I asked you whether he actually said it was satisfactory or whether you got that impression because he said nothing. You said no. He used the word "satisfactory."

A At that point I was tiring very much in the deposition,and he used "satisfactory" in describing the overall relationship of Topper and ~~saying~~ said that he had done an increasing amount -- that J. C. Penney had done an increasing amount of business with Topper over the past five or six years.

I asked Mr. Folan a question of whether he thought Topper was a suitable investment for us from a risk standpoint.

He asked me if I had read the April 1971 prospectus and I said,'Yes and that's in part why I am asking the question of you."

He then replied that it was a good relationship and he had been doing an increasing amount of business with Topper.

That is the context of what I was thinking at the time I answered your last question.

Q So, with respect to the actual payment provisions of Topper sales, he did not say that payment provisions in themselves were satisfactory?

A He did not say that.

Q You did not discuss that?

A We did not discuss that.

Q Now, that brings us up to date as to where we were in the last deposition.

Aside from the matters that I just mentioned, did you and Mr. Folan discuss anything else concerning Topper?

A I asked Mr. Folan if he thought Henry Orenstein was honest. He said that he did.

Q Did you discuss that in any more detail?

A No.

Q Did he explain that statement?

A He said that Mr. Orenstein was honest and that he considered him to be very hard working.

Q Did you discuss any other individuals at Topper?

Topper with Mr. Harrison?

A No, I don't.

Q Was it a few weeks prior to the 12th of August?

A I would have said it would have been the week before.

Q You say that Mr. Harrison, as a result of your conversation with him, made a check on toy stores who were customers of Topper?

A Mr. Mole was on vacation and Mr. Harrison knew he would be the one to sit in on this meeting with Downs and Rose on August 13th, so he did some homework on this, I think without my asking him to do this.

Q When you talked to him on the 12th of August concerning the meeting scheduled for the next day, he informed you of the work that he had done?

A I believe so.

Q What did that work consist of, to the best of your recollection?

A I believe he checked with a personal friend of his who was with Louis Marx and also he visited a toy store in the New Jersey area ~~for~~ with his small children and looked for Topper products.

Q Did he say what he discussed with his

friend who was with Louis Marx?

A Well, he indicated that his friend considered the toy business on a comparable level with the garment business.

Q What did you understand that comparison to mean?

A He felt the risk factors of the business were the same and it was the same kind of an industry.

Q Do you consider the risk factors of the garment business to be substantial?

A I know nothing about the garment business.

Q Did Mr. Harrison state whether he considered the risk factors of the garment business to be significant?

A That's the only thing that I remember of the conversation with Mr. Harrison, what I just told you.

Q That the comparison had been made?

A Yes.

Q But you drew no conclusions from that whatsoever?

A I think it was left that we would listen with an open mind to Mr. Downs and Mr. Rose the next day.

Q You drew no conclusion whatsoever from the comparison of the garment business with the toy

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done that on August 4th.

Q Aside from reading the brochure which contained the prospectus, you did nothing else previous to the meeting on the 13th concerning Topper?

MR. BICKS: I believe he testified that he read his earlier memoranda, too.

MR. LILLIE: That is correct.

Q Who was present at the meeting on the 13th?

A It was Mr. Harrison and myself from the Pension Fund and Mr. Rose and Mr. Downs from Topper.

Q That took place at your offices?

A That is correct.

Q Did you go into the two points which you stated you had intended to go into?

A Yes.

The meeting lasted two to two and a half hours in a small conference room. Then I took Mr. Downs and Mr. Rose to lunch in the U. S. Steel dining room and we continued the discussion there.

Q Would you relate, to the best of your recollection, the substance of the discussion which took place on the 13th?

A I have a very clear recollection of this meeting

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The third part of the meeting, and the one that we spent by far the most time on, was looking over the June 30, 1971 financial statements which had been supplied to us in the booklet called "Examples of Company Reporting" that Mr. Rose had brought with him so that we could review the company's control system and reports.

Q This was as a result of a request by you made on the 4th?

A I don't believe I made the request on the 4th. I think I told Henry Orenstein or J. Inglis that I wanted to meet with Mr. Rose to go over these reports because I had only looked at them quickly when I was at Topper on the 4th.

Q Mr. Rose had indicated he would bring them at some point?

A Well, he indicated that he would come in and discuss the company's control system in detail with us. I did not know until he got there what form this would take.

Q Let me show you a document and ask you if that is what Mr. Rose brought with him for the meeting on the 13th.

MR. LILLIE: A several page document

entitled "Topper Corporation, Examples of Company Reporting," please mark as Defendant City Bank Exhibit 1 for identification.

(Document above described, marked Defendant City Bank Exhibit 1 for identification, as of this date.)

BY MR. LILLIE:

Q Did you discuss this document at the meeting?

A Yes.

Mr. Harrison and I were sitting on the same side of the table and we jointly looked at practically all of the exhibits in this.

Q When you say "looked at," you mean you just reviewed them together. He was sitting next to you?

A With Mr. Rose on the other side of the table.

Q Aside from looking at them, did you discuss it with Mr. Rose?

A Very definitely. Mr. Rose went through much of the same discussion that I had on August 4th with him regarding the fact that Topper had overcome its past problems of not being able to coordinate shipments with sales, and also made mention of the fact that the way the toy companies got in trouble was in overproduction of merchandise.

I think he even made the same statement that he did on the 4th about goodwill at the Topper sales level being worth 30 or 40 percent of the sales in a particular account and referred to particular exhibits in this booklet while we were discussing it.

I remember specifically that we discussed the exhibit of how Topper coordinates the sales with the shipments and knows at any given time the open order balance of an account.

In addition, we discussed an exhibit in there which indicated that Topper kept close control of the lead parts for its production so that it would not have to close down its assembly line as it had done at times in the past, and on the other hand, did not overstock on inventories.

Then we specifically looked at the exhibit on accounts receivable and I think in that Mr. Rose was quite proud of the fact that his computer system had helped to overcome past problems of Topper that had occurred three or four years ago.

I remember this one particularly well because it had a report in there of agings of receivables which were prepared monthly and gave a breakdown of these agings by 30, 60 and 90 days.

It also had a report in there of collections for each month with the projected weekly projections for the month.

I can say that I remember this one especially well because one of the -- I remember it especially well, I believe the report on the agings, because Mr. Rose included one in on Abraham & Straus.

My father-in-law at that time was vice president and controller of Abraham & Straus. Also, the Pension Fund had several hundred thousand shares of Federated Department Stores, of which Abraham & Straus and Bloomingdales are subsidiaries. So I had an interest in this above and beyond the Topper question.

Mr. Rose said that First National City Bank received these reports regularly.

Q Just getting offthe point for one second. Did you ever disucss with your father-in-law or anybody at the corporation you said that the Pension Fund had several hundred thousand dollars invested in --

A Shares.

Q I am sorry, shares.

made reference to the fact that these snapshots were actually compared against activity reports at Topper headquarters to see whether the goods were actually moving from the retailers' shelves.

I think he indicated his collection people were in close contact with the retailers and that the figures were kept on a daily basis.

Q What else was discussed at the meeting on the 13th?

A Well, I asked Mr. Rose to supply us with any later figures on Topper if they became available after the June 30th unaudited figures.

Q Did he do that?

A No, he did not.

Q Did you ever follow up that request?

A Yes, I did.

At one of the drafting sessions, I believe, in September or on the telephone with Mr. Rose, I again asked him if he had any later figures and he said he didn't.

Q Was anything else discussed at the meeting on the 13th?

A The only thing I can think of that occurred in substance was at the lunch hour that Mr. Harrison ~~also~~ almost an hour and a half or two hours.

Q Would you relate what transpired, to the best of your recollection?

A Mr. Downs and Mr. Orenstein again indicated that the toy business was a less risky industry to invest in than it had been in the past by virtue of the substantial growth in sales and the advantages of a larger toy company over a smaller one.

Specific reference was made that Mr. Orenstein was monitoring the flow of goods over the counter at key retail outlets.

He indicated that the Smarty Pants doll was likely to be the doll of the season. He was also quite high on the Sesame Street line and he said he thought Topper would ~~go~~ do about $7,000,000 in sales then and probably do about $21,000,000 in sales in 1971.

He again referred to the Dawn program and the fact that it had been a success and was adding stability to Topper.

He indicated that merchandise had been purchased for a similar program in 1971 and I believe also said to replace Dawn merchandise that had been sold in 1970.

Mr. Mole was very conscious of the past history of Topper and asked whether the practice of selling on consignment had been abandoned and questioned about this period of substantial deficits in Topper. Everybody at the meeting assured him that this practice no longer existed and that sales were final sales.

Mr. Rose, I believe, referred to this booklet of "Examples of Company Reporting" which we had with us in the room at the time and again went over, for the third time in my presence, the fact that these computerized control systems would prevent a return of Topper's past problems.

Q Excuse me. The computerized control system did not relate -- or let me ask that question.

Did the computerized control systems, to your understanding, relate to the problem of consignment sales?

A Yes.

Q Could you explain that?

A We wanted to be sure that the merchandise was actually moving at the retail level and we wanted to know that the company had controls to know what its returns actually were. In effect, that there were not going to be any surprises in Topper and that

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to the best of your recollection?

A Yes, I did.

I think I indicated to you before, J. Inglis was calling up and very much interested in scheduling a meeting with Mr. Mole and inquired what remained to be done before the Pension Fund could give him a decision on Topper after this meeting.

Within a few days after the September 1st meeting, Mr. Inglis called again and he specifically inquired as to how our banking check had come out.

I don't remember the details of this conversation, but I know I told Mr. Inglis what he asked me about. Specifically I remember telling him that the check with First National City Bank had been favorable and that we had been told that there weren't any problems in Topper; that Mr. Rose was a competent financial person; that the bank worked closely with his staff and that the bank did not know of any problems in the receivables and that the company had performed well in the audits.

He may have asked me other questions about this, in which case I told him what he wanted to know.

I remember telling him these things.

Q Let me review a few things that transpired

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at them in detail then.

I think, as I testified to previously, I looked at the samples that Mr. Rose brought in at the August the 13th meeting.

Q Was it your understanding that these documents referred to customer reports as to how goods were selling at retail?

A Please read the question back again.

(The question was read.)

MR. BICKS: By "these documents," you are referring, I believe, Mr. Griffin, if I understand your question, to the computer printouts to which Mr. Rose had previously directed Mr. Thompson's attention?

MR. GRIFFIN: And to which Mr. Thompson testified in his immediately-preceding answer.

A I'm still confused.

I think the answer is no, if we are talking about what I was looking at with Rose ~~at~~ on August 4th in the ~~[illegible]~~ computer room, and in his office.

Q Maybe I can simplify it a little better. I think we have a misunderstanding.

You have said that Rose represented to you that his people, people in the Credit Department, would

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contact customers--did contact customers on occasion, at least, and asked how the goods were moving from the individual customers to the ultimate consumer; is that correct?

A As part of their credit work, they called up customers and said, "Hey, you owe me so much money; pay me."

Q Right. This is what they did on a regular basis?

A I don't believe they made any calls independent of what they were doing on a regular credit check basis.

They merely asked the person that they were talking to, you know, "How are the Widget dolls going?"

Does that clarify it?

Q Yes.

A Okay.

Q They presumably received response when they would ask, "How are such-and-such products going at retail"; is that correct?

A Presumably.

Q My question to you is whether Mr. Rose indicated that any written document reflecting these responses or changing them was kept or made.

A He didn't indicate this to me.

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Q Did you ask him?

A No.

Q Who is the head of the Credit Department; do you know?

A No, I don't.

Q These inquiries that they would make, these credit people would make of customers regarding how they were selling, the customers were selling merchandise: Were you informed, or did you get the impression that this was a regular part of their duties, or just that they would do it on occasion when they thought of it, or weren't you given any impression with regard to that?

A I thought they did it fairly regularly.

Q This was part of their duties?

A Yes; that Mr. Rose had told them to do this.

Q Did Mr. Rose make a statement to you during that day regarding the wisdom or lack of wisdom of overstocking a customer with merchandise?

A Yes, he did. He indicated that it would be foolish to overstock the trade with merchandise, and that this was how toy companies typically got into trouble, if they did.

He then went on to say that, I believe, that